Cottoni Postbuma:

DIVERS

CHOICE PIECES

Wherein are discussed

Several Important Questions

Concerning the

RIGHT & POWER

OF THE

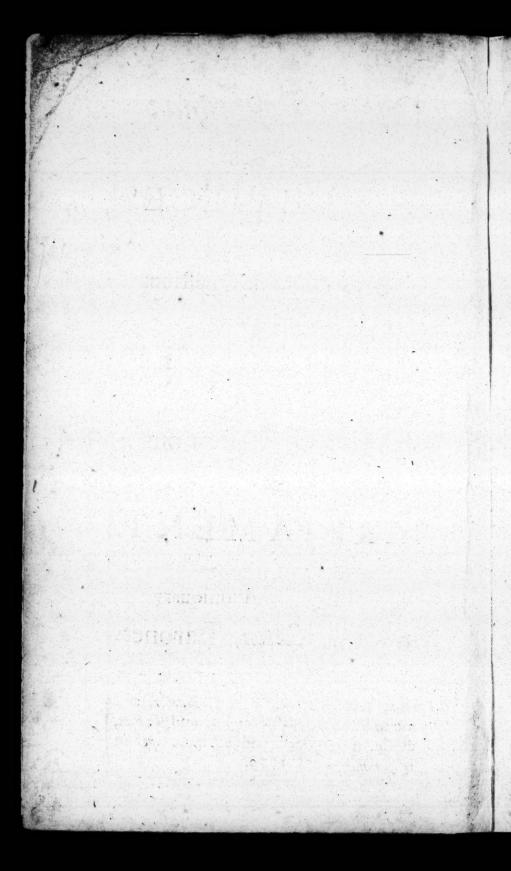
Lords and Commons

IN

PARLIAMENT.

By the Renowned Antiquary
Sir Robert Cotton, Baronet.

London, Printed by M. C. for C. Harper, and are to be Sold by W. Hensman and T. Fox, at the Kings Head, and at the Angel in Westminster-Hall, 1679.



To his worthily Honoured Friend, Sir Robert Pye Knight, at his House in Westminster.

HE long interest of Friendship, and nearness of Neighbourhood, which gave you the opportunity of conversing often with that

worthy Baronet, who was Author of these ensuing Discourses, induced me to this Dedicatory Address. Among the Greeks and Romans (who were the two Luminaries that first diffused the rayes of Knowledge and Civility through these North-west Climes,) He was put in the rank of the best sorts of Patriots, who preserv'd from putrefaction and the rust of Time, the Memory and Works of Vertuous Men, by exposing them to open light for the general good; Therefore I hope not to deserve ill of my Country, that I have published to the World these choice notions of that Learned Knight Sir Robert Cotton, who for his exact recerchez into Anti-Az

The Epistle Dedicatory.

Antiquity, hath made himself famous to Po-

sterity.

Plutarch in writing the lives of others, made his own everlasting: So an Antiquary, while he feels the pulse of former Ages, and makes them known to the present, renders himself long liv'd to the future.

There was another inducement that moved me to this choice of Dedication, and it was the high respects I owe you upon sundry obligations, and consequently the desire I had that both the present and after times might bear witness how much I am, and was,

SIR,

3. Nonas Aprl.

1651.

Your humble and, truly devoted Servant,

James Howel.

To the knowing Reader, touching these following Discourses, and their AUTHOR.

HE memory of some men is like the Rose, and other odoriserous flowers, which cast a sweeter and stronger smell after they are

pluck'd: The memory of others may be faid to be like the Poppie, and such Vegetals that make a gay and specious shew while they stand upon the stalk, but being cut and gather'd, they have but an ill-savour'd scent: This worthy Knight may be compared to the first sort, as well for the sweet odor (of a good name) he had while he stood, as also after he was cut down by the common stroke of Mortality: Now to augment the fragrancy of his Vertues and Memory, these following Discourses, which I may term, not altogether improperly a Pose of sundry differing Flowers, are exposed to the World.

All whoever knew this well-weighed Knight, will confess what a great Zeal he was to his Countrey, how in all Parliaments, where he served so often, his main endeavours were to affert the publick Liberty, and that Prerogative and Priviledge might run in their due

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To the Reader.

Channels: He would often say, That he him-self had the least share in himself, but his Countrey and his Friends had the greatest interest in him: He might be said to be in a perpetual pursuit after Vertue and Knowledge; He was indefatigable in the search and research of Antiquity, and that in a generous costly manner, as appears in his Archives and copious Library; therefore he may well deserve to be ranked among those Worthies—Quorum Imagines lambunt Hederæ sequaces; for an Antiquary is not unsitly compared to the Ivie, who useth to cling unto ancient Fabriques and Vegetals.

In

In these Discourses you have

1. A Relation of proceedings against Ambassadors who have miscarried themselves, and exceeded their Commission. \$.)

2. That the Kings of England have been pleased to consult with their Peers in Parliament for Marriage of their Children, and touching Peace and War, &c. p.13 tobis privint

3. That the Soveraigns Person is required in Parliament in all Consultations and Conclu-(ions. \$ 43

4. A Discourse of the legality of Combats, Duels,

or Camp-fight. p. 61.

5. Touching the question of Precedency between

England and Spain. 6. 75'
6. Touching the Alliances and Amity which have intervened betwixt the Houses of Austria and England. 6.93.

7. A Discourse touching Popish Recusants, Je-

suits and Seminaries. \$.111

8. The Manner and Means how the Kings of England have supported and improved their

States. 6.163.

9. An Answer to certain Arguments urged by a Member of the House of Commons, and raised from supposed Antiquity, to prove that Ecclesiastical Laws ought to be Enacted by Temporal men. 6. 205.

To the Reader.

10. The Arguments produc'd by the House of Commons concerning the Priviledge of every Free-born Subject. B. 22/

11. A Speech delivered in the House of Commons Assembled at Oxford in the first year of the

King. p. 273

12. A Speech delivered before the Council Table, touching the alteration of Coin. 6.289

13. Valour Anatomized in a Fancy, by Sir Phi-

lip Sidney. p. 32-51

14. A brief Discourse concerning the Power of the Peers and Commons of Parliament, in point of Judicature. 6.345

15. Honesty, Ambition and Fortitude Anatomized by Sir Francis Walfingham. 5.333.

16. The Life and Reign of Henry the Third, Sang, rofy Kolomi echnindy

These Discourses being judiciously read, will much tend to the enriching of the understanding, and improvement of the Common stock of Knowledge.

Fra: Haffurgham, Inalony Andition,

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RELATION

OF THE

PROCEEDINGS

AGAINST

AMBASSADORS

Who have miscarried themselves, &c.



M humble obedience to your Graces Command; I am emboldened to present my poor advice to this the greatest, and most important

cause that ever happened in this State, the Quiet of the Kingdom, the honour of the Prince, the safety of the Spanish Ambassadors Person, exposed hereby to the fury of the people, all herein involved: A consideration not the least for the reputation of the State and Government, though he little deserve it.

The information made to his facred Majesty by him, That your Grace should have plotted this Parliament; Wherein if his Majesty did not accord to your defigns, then by the Authority of this Parliament to confine his facred Person to some place of pleasure, and transfer the Regal Power upon the Prince: This Information, if it were made by a Subject, by the Laws of the Realm were High Treason, to breed a rupture between the Soveraignty and the Nobility, either by Reports or Writings, and by the Common Law is adjudged no less: The Author yet knowing that by the representing the Person of a Soveraign Prince he is by the Law of Nations exempt from Regal Tryal, all actions of one so qualified being made the Act of his Master, until he disavow: And injuries of one absolute Prince to another, is Factum bostilitatis, and not Treason. The immunity of whom Civilians col-- lect as they do the rest of their grounds from the practice of the Roman State, deducing their Arguments from these Titus Livius 2. Examples. The Fabii Ambassadors from Rome were turned fafe from the Chader with demand of justice against them only, although they had been taken bearing Arms with the Etrurians their Enemies: The Ambassadors of the Tarquines: Morte affligendos Romani non judicarunt, & quanquam visi sunt ut hostium loco

dec.

Livius.

loco effent, jus tamen Gentium voluit. And where those of Syphax had plotted the murder of Masinissa. Non aliud mihi fa-Elum quam quod sceleris sui reprebensi essent, faith Appian: The Ambassadors of the Protestants, at the Council of Trent, though divulging there the Doctrine of the Chur- Acta Trider. ches, contrary to a Decree there enacted, a concil. crime equivalent to Treason, yet stood they protected from any punishment: So much doth publick conveniency prevailagainst a particular mischief; That the State of Rome, though in case of the most capital crime, exempted the Tribunes of the people August. de lefrom question during the year of office : gibus Antiq. And the Civilians all consent, that Legis de Roman. Fure Gentium indictum est, ut eorum corpora Salva sint, propter necessitatem legationis, ac ne confundant jura commercii inter Principes. The redress of such injuries, by such perfons, the example of Modern and best times will lead us to. Vivia the Popes Legate Benedict. in viwas restrained by Henry the Second, for ex- ta Hen. 2. ercifing a power in his Realm, not admit- 4.154. ted by the King, in disquiet of the State, and forced to swear not to act any thing in Prajudicium Regis vel Regni. Hen. 3. did Record. in the like to one of the Popes Ambassadors, Scaccar. West: another flying the Realm secretly fearing claus. Edw. 1. another flying the Realm secretly, fearing, timens pelli sui, as the Record saith, Edward. I. fo restraining another until he had, as his Progenitors had, informed the Pope of the fault of his Minister, and received fatisfaction of the wrongs. In the year 1523. Lewis

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Lewis in the Paper Chart. 1523. Lewis de Pratt: Ambassador for Charles 5. was commanded to his house, for accusing fallly Cardinal Wolfey to have practifed a breach between Hen. 8. and his Master, tomake up the Amity with the French King; Sir Michael Throgmorton by Charles the 9. of France, was so served, for being too busie with the Prince of Conde in his faction. Doctor Man in the year 1567. was taken from his own house in Madrill, and put under a Guard to a straiter Lodging, for breeding a Scandal (as the Conde Teri faid) in uling by warrant of his Place, the Religion of his Country, although he alledged the like permitted to Ghusman de Sylva their Ambassador, and to the Turk no less than in Spain. In the year 1568. Don Ghuernon d' Espes was ordered to keep his house in London, for fending scandalous Letters to the Duke d' Alva unsealed. The Bishop of Roffe in the year 1571. was first confined to his house, after to the Tower, then committed for a good space to the Bishop of Ely his care, for medling with more business than belonged to the place of his imployment: The like was done to Dr. Alpin and and Malvisett the French Ambassadors succeffively, for being busie in more than their Matters affairs. In the time of Philip the second of Spain, the Venetian Ambassador in Madrill, protecting an offender that fled into his house, and denying the Alcalds or Justices to enter his house, where the Ambassador stood armed to withstand them, and

and one Bodavario a Venetian, whom they committed to Prison, for his unruly carriage, and they removed the Ambassador unto another house, until they had searched and found the Offender: Then conducting back the Ambassador, set a guard upon his house, to stay the fury of the people inraged. The Ambaffador complaining to the King, he remitted it to the Supreme Council; they justified the proceeding, condemning Bodavario to lose his head, and other the Ambassadors servants to the Galleys, all which the King turned to banishment, sending the whole process to Inego de Mendoza his Ambassador at Venice, and declaring by a publick Ordinance unto that State, and all other Princes, that in case his Ambassadors should commit any offence, unworthily, and disagreeing to their professions, they should not then enjoy the priviledg of those Officers, referring them to be judged by them where they then resided. Bernardino de Mendoza, for traducing fally the Ministers of the State to further his feditious Plots, was restrained first, and after commanded away in the year 1586. The last of Spanish Instruments that disquieted this State, a benefit we found many years after by their absence, and feel the want of it now by their reduction.

Having thus shortly touched upon such precedent examples, as have fallen in the way of my poor observation. I humbly crave pardon to offer up my simple opinion

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what course may be had of prosecution of this urgent cause. I conceive it not unfit, that with the best of speed, some of the chief Secretaries were fent to the Ambassador by way of advice, that they understanding a notice of this information amongst the common people, that they cannot but conceive a just fear of uncivil carriage towards his Lordship or his followers, if any the least incitement should arise; and therefore for quiet of the State, and fecurity of his person, they were bound in love to his Lordship to restrain, as well himself as followers, until a further course be taken by legal examination, where this aspession begun, the way they only conceived fecure to prevent the danger; this fear in likelyhood will be the best motive to induce the Ambaffador to make discovery of his intelligence, when it shall be required: I conceive it then most fit, that the Prince and your Grace to morrow should complain of this in Parliament, and leaving it so to their advice and justice, to depart the House, the Lords at the instant to crave a conference of some small number of the Commons, and so conclude of a Message to be sent to the Ambassador to require from him the charge and proofs; the Persons to be sent, the two Speakers of the two Houses with some convenient company of either, to have their Maces and enfigns of Office born before them to the Ambassadors Gate, and then forborn, to shew fair respect to the Ambas**fadors**

fadors, then to tell them that a relation being made that day in open Parliament of the former information to the King by his Lordship, they were deputed from both Houses, the great Council of the Kingdom. to the which, by the fundamental Law of the State, the chief care of the Kings safety and public quiet is committed, they were no less the high Court of Justice, or Supersedess to all others, for the examining and correcting all attempts of fo high a nature as this, if it carry truth; That they regarded the honour of the State, for the Catholicks immoderate using of-late the Lenity of Soveraign Grace to the scandal and offence of too many, and this aspersion now newly reflecting upon the Prince and others, meeting with the former distaste (which all in public conceive to make a plot to breed a rupture between the King and State, by that party maliciously layd) hath so inflamed and sharpned the minds of most, that by the access of people to Term and Parliament, the City more filled than usual, and the time it self near May day (a time by custom apted more to licentious liberty than any other) cannot but breed a just jealousie and fear of some disorder likely to enfue of this information, if it be not aforehand taken up by a fair legal tryal in that High Court: Neither want there fearful examples in this kind in the Ambafsadors of Genoa upon a far less ground in the time of Parliament, and his house demolished B 4

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molished by such a seditious tumult: The Parliament therefore, as well to secure his Lordships person, followers and friends, from such outrages, as to preserve the honour of the State, which needs must suffer blemish in such misfortunes, they were sent thither to require a fair discovery of the ground that led his Lordship so to inform the King. That they might so thereupon provide in Justice and Honour, and that the reverence they bear unto the dignity of his Master, may appear the more by the mannerly carriage of this Message, the two that are never imployed but to the King alone, were at this time fent, and that if by negligence of this fair acceptance, there should happen out any any such disaster and danger, the World and they must justly judg as his own fault. If upon the delivery of this Message the Ambassador shall tell his charge, and discover his intelligence, then there will be a plain ground for the Parliament to proceed in Examination and Judgment; but if (as I believe) he will refuse it, then is he Author Scandali both by the Common and Civil Laws of this Realm, and the Parliament may adjudg it false and untrue, and declare by a publick Act, the Prince and your Grace innocent, as was that of the Duke of Gloucester, 2 Rich. 2. and of York in Henry the fixth his time, then may the Parliament joyntly become Petitioners to his Majesty, first to confine his Ambassador to his house, reftraining straining his departure, until his Majesty be acquainted with his offence, and aswel for security as for further practice to put a Guard upon the place, and to make a Proclamation that none of the Kings Subjects shall repair to his house without express leave: And to fend withal a Letter, with all speed, of complaint against him to the King of Spain, together with a Declaration under the Seals of all the Nobility, and Speaker of the Commons in their names as was 44 Hen. 3. to the Pope, against his Legate, and 28 Edm. 1. Requiring such Juflice to be done in this case, as by the Leagues of Amity, and the Law of Nations is usual, which if the King of Spain refuse, or delay, then it is Tranfactio Criminis upon himself, and an absolution of all Amity and friendly intelligence, and amounts to no less than a War denounced. Thus have I by your leave, and command, delivered my poor opinion, and ever will be ready to do your Grace the best service, when you please to command it.

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KINGS

OF

ENGLAND

Have been pleased, usually, to Consult

WITH THEIR

PEERS

IN THE

GREAT COUNCIL,

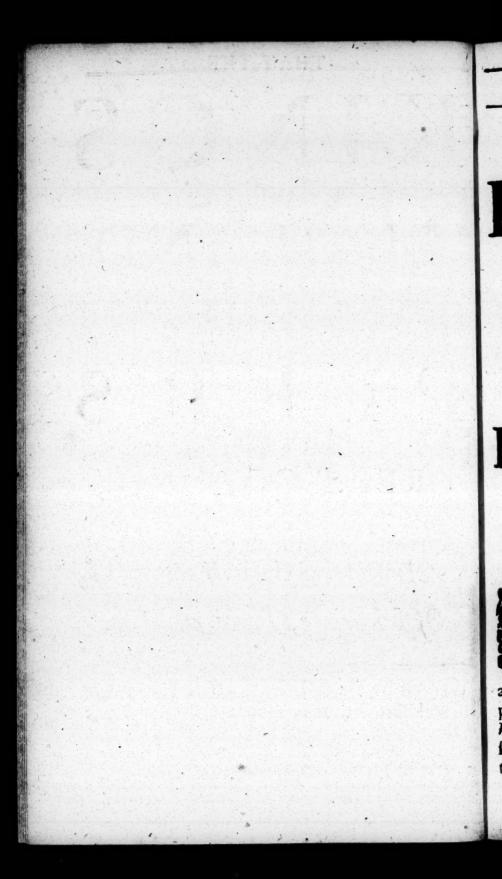
AND

Commons in Parliament,

Of Marriage, Peace, and War.

Written by Sir ROBERT COTTON, Knight and Baronet, Anno 1621.

LONDON: Printed in the Year 1679.



THAT THE

KINGS

OF

ENGLAND

Have been pleased, usually, to Consult

WITH THEIR

PEERS

INTHE

Great Council, &c.

O fearch to high as the Norman Conquest, it is necessary to lay down the form and Government of those times, wherein the state of affairs then lead in

another form of publick Councils; for the people brought under by the Sword of William, and his followers to subjected vaf-william the sallage, could not possess in such Assemblies Conqueror, the right of their former liberties, division Malmsbury.

and power having mastered them, and none of their old Nobility being left either of credit or fortune; what he retained not in providence as the Demesnes of the Crown, or reserved not in piety for the maintenance of the Church, he parted to those Strangers that sailed along with him in the Bark of his adventure, leaving the Natives (for the most part) as appeareth by his survey in no better condition than Villenage; He moulded their Customs to the manner of his own Country, and forbore to grant the Laws of the Holy Edward so often called for.

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To supply his occasions of men, mony, or provisions, he Ordered that all those that enjoyed any fruit of his Conquest, should hold their Lands proportionably by so many Knights sees of the Crown, and admitted them to inscoff their followers, with such part as they pleased of their own

Ex lib. feod. in Scacc.

Hen. t. Ex lib. pub. in Scace.

Chron. de Dunstable. Mat. Paris Benedictus Monachus in vita. Hen. 2.

fo many Knights fees of the Crown, and admitted them to infeoff their followers, with fuch part as they pleased of their own portions, which to ease their charge they did in his and his Sons time, by two infeoffments, the one de novo, the other de veteri; This course provided him the body of his War, the money and provision was by Hydage affeffed on the common people; at the consent of their Lords, who held in all their Signiories such right of regality, that to their Vassals (as Paris faith) quot Domini tot Tyranni, and proved to the King so great a curb and restraint of power, that nothing fell into the care of Majesty after, more than to retrench the force of this Aristocracy that was like in time to

strangle the Monarchy.

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Though others foresaw the mischief betimes, yet none attempted the remedy, Gervas. Dorch. until King John, whose over-hasty underta-Roger Wendo-kings, brought in those broyls of the Ba-ver. King John.

There needed not before this care to advise with the Commons in any publick assemblies, when every man in England by tenure held himself to his great Lords will, whose presence was ever required in those Great Councils; and in whose assent his dependent Tenants consent was ever included.

Before this Kings time then, we feek in class. 6. Joh. vain for any Council called, he first, as may in 3. Dorso. be gathered (though darkly by the Record) used their Counsels and affents in the fixth

year of his Reign.

Here is the first summons, in Records, to the Peers or Barons, Tractaturi de magnis, & arduis negotiis, it was about a War of desence against the French; And that the Commons were admitted at this time, may be fitly gathered by this Ordinance, viz. Provisum est assense Archiepiscoporum, Comitum, Baronum, & omnium sidelium nostrorum Anglia, quod novem milites per Angliam inveniend. decimarum, &c. and this was directed to all the Sheriss in England, the ancient use in publishing Laws: From Petit. 18. this there is a breach until the 18 Hen. 3. Hen. 3. where the next summons extant is in a Plea

clauf. 49: Hen. 3. in. 11. Dorf.

Plea Roll of that year, but the Ordinances are loft: From hence the Records afford us no light until the 49 of the fame King, where then the form of fummons to Bishops, Lords, Knights, and Burgesses, are much the same in manner, though not in matter, to those of our times.

This Parliament was called to advise with the King pro pace affecuranda & firmanda, they are the words of the Writ, and where advice is required, confultation

must needs be admitted.

Edw. 1.

Ex Rot. Parl. in Archivis London.

To this King succeeded Edward his Son, a wife, a just, and fortunate Prince; in his Reign, and so long to the fourth of his Grandchild, we have no light of publick Councils in this kind, but what we borrow in the Rolls of Summons, wherein the form flood various according to the occafions, until it grew constant in the form it is now, about the entrance of Rich. 2. The Journal Rolls being spoiled, by the injury of times or private ends.

Clauf. 5. Edw. 1. in. 12.

This King, in the fifth of his Reign, called a Parliament, and therein advised with his Lords and Commons for Suppressing of Llewellen Prince of Wales, and hearing that the French King intended to invade some pieces of his Inheritance in France, Rot. Parl. Anno he summoned a Parliament, Ad tractand.

7 Edw. 1.

ordinand. & faciend. cum Pralatis, Proceribus & alius Incolis Regni quibuslibet hujusmodi periculis & excogitatis malis sit objurand. Inserting in the Writ that it was

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Lex justissima, provida circumspectione sta- claus. 7. Edw. bilita: That Quod omnes tangit ab omni- 1. in 3. Dorf. bus approbetur. In 34. Super ordinatione 1. in dors. & stabilimento Regis Scotia, he made the like Convention.

Clauf. 34. Ed.

His Son the second Edward, pro folen- Edw. 2. nitate Sponfalium & Coronationis, confulsed with his people in his first year; in his fixth year, Super diversis negotiis statum regni & expeditionem Guerræ Scotiæ fpe- Clauf. 1. Edw. cialiter tangentibus, he affembled the State to advise, the like he did in the eighth.

The French King having invaded Ga- clauf. 8. in 3. scoin, in the thirteenth year the Parlia- in dorf. ment was called, Super arduis negotiis sta- claus. 13. Ed. 2. tum Gasconia tangentibus. And in 16. to in 13. in dorf. consult ad refranand. Scotorum obstinen- Claus. 16. E. 2. tiam & militiam.

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2. in I g.in dorf. Clauf. 6. Ed. 2. in z. in dorf.

Before that Edward the 3. in his first year would resolve whether Peace or War with the Scotish King, he summoned Edw. 3. the Peers and Commons, Super premissis Claus. 1. Ed. 3. tractare & consilium impendere.

in 27. in dorf.

The Chancellor in Anno quinto decla- Rot. Parl. reth from the King the cause of that As- 5. Edw. 3. fembly, And that it was to confult and refolve, whether the King should proceed with France for recovery of his Signiories by alliance of marriage, or by War? And whether to suppress the disobedience of the Irish, he should pass thither in Person or no?

in dorf.

The year following he re-affembleth Parl.6. Edm.3. his Lords and Commons, and requireth their

their advice, whether he should undertake the Holy Expedition with the French King that year, or no? The Bishops and Proctors of the Clergy would not be present, as forbidden by the Canons such Councils, the Peers and Commons consult, applauding the Religious and Princely forwardness of their Soveraign to this holy enterprize, but humbly advise a forbearance this year for urgent occasions.

Rot. Parl. 6. Edw.3. Seff. 2. in 6.

The fame year, though at another Sessions, the King demanded the advice of his people. Whether he should pass into France to an interview as was defired for the expediting the Treaty of Marriage: the Prelates by themselves, the Earls and Barons by themselves, and the Knights of the Shires by themselves, consulted apart, for so is the Record; and in the end resolved, That to prevent some dangers likely to arise from the North, it would please the King to forbear his journey, and to draw towards those parts where the perils were feared, his presence being the best prevention; which advice he followed.

Rot. Parl. 7. Edw. 3. In the following Parliament at Tork the King sheweth how by their former advice he had drawn himself towards the North parts, and now again had assembled them to advise further for his proceedings, to which the Lords and Commons having consulted apart, pray sur-

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ther time to resolve, until a full assembly of the State, to which the King granting, adjourneth that Seffions. At the next Rot. Parl. 7. meeting they are charged upon their Al- Edw. 3. Seff. 2. legiance and Faith, to give the King Parl. 7. their best advice; the Peers and Commons confulting apart, deliver their opinions, and fo the Parliament ended.

In the 13 year the Grands and Com- Rot. Parl. 13. mons are called to confult and advise Edw. 3. how the Domestick quiet may be preferved, the Marches of Scotland defended, and the Sea secured from forreign Enemies; the Peers and Commons having apart confulted, the Commons after their defire not to be charged to counfel in things Des queux ils n'ont pas cognizance, answer, That the Guardians of the Shires, affifted by the Knights; may effect the first, if pardons of Felony be not granted.

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The care of the Marches they humbly leave to the King and his Council, and for the fafeguard of the Seas, they wish that the Cinque Ports, and Marine towns, discharged for the most part from the main burthens of the In-land parts may have that left to their charge and care, and that fuch as have lands neer the Coasts be commanded to reside on those possessions.

The Parliament is the same year re- Rot. Parl. 13. affembled Avisamento Prelatorum, proce- Edw. 3. Seff. 2. rum, necnon communitatis, to advise de expeditione

Edw. 3. in. 6.

peditione guerræ in partibus transmarinis; at this, Ordinances are made for provision of Ships, arraying of men for the Marches, and defence of the Isle of Jersey, naming such in the Record, as they conceive sit for the imployment.

Parl. 14. Ed.3.

The next year De la Pool accounteth in Parliament, the expences of the Wars, a new aid is granted, and by several Committees in which divers are named that were no Peers of Parliament, the safeguard of the Seas, and defence of the borders are consulted of.

In the 15 year, De affensu Pralatorum Procerum & aliorum de consilio, the Kings passage into France is resolved of. Anno 17. Badlesmere, instead of the Council declareth to the Peers and Commons, That whereas by their assents the King had undertaken the Wars in France, and that by meditation of the Pope a truce was offered, which then their Soveraign forbore to entertain without their well allowance; the Lords consult apart, and so the Commons returning by Sir William Trussel an answer, their advice and desire is to compose the Quarrel, approve the Truce, and the Popes mediation.

Rot. Parl. 18. Edw. 3. The Popes undertaking proving fruitless, and delays to the French advantage, who in the mean space allied with Scotland and others, practifed to root out the English Nation in France: This King again assembled the year follow-

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ing, in which the Peers and Commons after many days meditation, refolve to end either by Battel or Peace, and no more to trust upon the mediation or

message of his Holiness.

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In the 21 year, the chief Justice Thorpe Rot. Parl. 21. declaring to the Peers and Commons Edw. 3. that the French Wars began by their advice first, the Truce after by their assents accepted, and now ended, the Kings pleasure was to have their Counsels in the prosecution, the Commons being commanded, Que ils se deveroyent trait ensemble & se quils ensenteroient monstrer au Roy & au gravitur de son consilio, Who after four days consulting, humbly desire the King to be advited by his Lords and others, more experienced than themselves in such affairs.

To advise the King the best for his Parl.25. Ed.3. French imployments, a Parliament was summoned Anno 25. Herein the King for a more quick dispatch willeth the Commons to elect 24 or 30 of their House to consult with the Lords, these to relate to their fellows, and the conclusion general by the Lords to the Kings.

In the 27 a Great Council is affem- Parl, 27. Ed.3. bled, many of the lay Peers, few of the Clergy, and of the Shires and Burroughs

but one a piece.

This was for the profecution of the Parl.27. Ed.3. French Wars, when honourable peace could not be gotten; but the year fol-

lowing a Truce offered, the King forbore to entertain, until he had the confent of the Peers and Commons, which they in Parliament accorded unto before the Popes Notary, by publick Inftrument.

Parl. 29. Ed. 3. The dallying of the French King in conclusion of peace, and the falling off of the Duke of Brittany, having wrought his end with France by reputation of the Engliff fuccour, is the year following declared in Parliament, and their advice and aid required for the Kings proceeding.

In the 36 year he called a Parliament Parl. 36. Ed.3. to confult whether War or Peace by David King of Scots then offered, should be accepted?

In the 40 the Pope demanding the Parl.40. Ed.3. tribute of King John, the Parliament affembled, where after confultation apart, the Prelats, Lords, and Commons advise the denyal, altough it be by the dint of Sword.

> In 43. the King declares to the Peers and Commons, that the French against the Articles of the Truce, refused payment of the moneys, and delivery of the Towns, fummoning La Brett, and others the Kings subjects in Gascony, to make at Paris their appeals, and had forraged his Town of Bontion, requiring, whether on their breach he might not again resume the file and arms of France.

The Lords and Commons had apart confulted, they advised the King to

King John.

Parl. 43.Ed.3.

both,

both, which he approving, altered the inscription and figure of his Seal.

Two years after it was declared to the Parl.45. Ed.3. Peers and Commons, that by their advice he had again resumed the stile and quarrel of France, and therefore called their advice for the defence of the realm against the French, securing of the Seas, and pursuing of the War, of which they confult, and resolve to give the King an aid; the like of Counsel and supply was Parl. 46. Ed. 3.

the year succeeding.

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In the 50 a Parliament to the purposes Parl.50. Ed.3. of the other two was fummoned; and the year following the King in Parliament declaring how the French combined underhand against him with Spain and Scotland, required their advice, how Peace at home, the Territories abroad, Security of the Sea, and charge of the War might be maintained. I have the longer infifted in observing the carriage of these times, so good and glorious, after Ages having not left the Journal entries of Parliament so full, which with a lighter hand I will pass through.

Richard his Grand-child succeeded to Rich. 2. the Crown, and troubles, having nothing worthy his great fortunes, but his Parl. 1. Rich. 2. great birth; the first of his Reign he in 5 6. purfued the Steps of his wife Grandfather, advising with Peers and Commons how best to resist his Enemies, that had lately wronged many of his Subjects upon the Sea coasts.

Pari. 1. Rich.2.

In the fecond year he again confulted with his people, how to withstand the Scots, who then had combined with the French to break the Truce.

Parl.3. Rich.2.

In the third he called the advice of Parliament, how to maintain his regality, impaired by the Popes provision, how to resist Spain, France and Scotland, that had raised Wars against him, how to suppress his Rebels in Guyen and Ireland, and how to defend the Seas.

Parl.4. Rich.2.

Parl.5. Rich.2.

The like in the fourth year following at Windsor; the year succeeding at a great Council, the King having proposed a voyage Royal into France, now called the Parliament to determine surther of it; and it is worthy observation, for the most before any proposition of War or Peace were vented to the Commons, a debate thereof proceeded in the great Council to stay it sitter to popular advice.

Parl. 5 . Seff. 2.

The quarrel of Spain continuing, the Duke of Lancaster offered a Voyage against them, so that the state would lend him money, after consultation they granted aid, but not to bind them to any continuance of Wars with Spain.

Parl.6. Rich.z.

In the 6th the Parliament was called, to consult about defence of the borders, the Kings possessions beyond Sea, Ireland and Gascoyne, his Subjects in Portugal, and safe keeping of the Seas; and whether the King should proceed by Treaty

of

of Alliance, or the Duke of Lancaster by force; for the Conquest of Portugal, the Lords approve the Dukes intention for Portugal, and the Commons advise, that Thomas Bishop of Normich, having the Popes Croiceris, should invade France.

The same year the State was re-assem- Parl. 6. Seff. 2. bled to confult, whether the King should go in person to refcue Gaunt, or send his Army; the Commons after two days debate, crave a conference with the Lords; the effect is not entered in the Roll, only they bid Sir Thomas Pickering their Speaker protest, that Counsels for War did aptly belong to the King and his Lords; yet fince the Commons were commanded to give their advice, they humbly wished a Voyage Royal by the King; if not, that the Bishop of Norwich ought with the advantage of the Popes Croiceris be used in that service, who accepted the Charge with ill fuccess; he further for the Commons prayed, that the Kings Unkle should not be spared out of the Realm, before some place be fetled with the Scott, and that the Lord de la Sparre sent with Propositions from Spain, may first be heard.

The Chancellor in the seventh year, par. 7 Rich. 2. in the name of the King willeth the Lords apart, and so the Commons, to consult whether Peace or War with Scotland, or whether to resist or assail

the

the Kings adventure with Spain, France, or Flanders.

Their opinion is not entered in the Rolls (an omiffion usual by the Clarks neglect) only their Petition is recorded, that the Bishop of Norwich may accompt in Parliament the expence of the monies, and be punished for his faults in the fervice he undertook, both which

are granted.

Parl.7.50 1. 2.

At the next Sessions, the same year, the Commons are willed to advise upon view of Articles of Peace with the French, whether War, or such a Unity should be accepted: They modefully excused themselves as too weak to consult in such weighty affairs. But being charged again as they did tender the honour and right of the King, they make this answer, Quils intendent que aucunes sermas & terres que mesme leur Leige auroit oit pur cest accord in Guien, si serront tenus dobt Roy Francois par bomage & service, mais ne persont uny que leur dit Leige voiroit assenter trope legierement de temer dicens François pertiel service la ville de Callis & aultres terres conquises des francoise per lespreneve verroit la comen ense faest fait, si autrement lour perroit bien faire, giving their opinions rather for Peace than War; Peace with France not fucceeding the eighth year, the body of the State was willed to advise, whether the King in his own person, or by sending

Par. 8 Rich 2.

of forces against the French, Spain, Flanders, and Scotland, should proceed.

This King having affembled at Oxon, clauf. 9 Rich. 2his great Council to advise whether he should pass the Seas or no, with an Army Royal, and they not daring to affent without greater Counsel.

A Parliament the tenth year to have Par. 10. Rich. 2. the advice of the Commons, as well as of the Lords, was called, and how the Realm (hould be governed in their So-

vereign's absence.

The truce with France was now ex-parl. 13Rich.?. pired, the Parliament was called in the 13th. to advise upon what conditions it should be renewed, or otherwise how the charge of the War should be susteined; at this affembly, and by consent of all, the Duke of Lancaster is created Duke of Aquitaine, the Statute of pro-Rot. claus. 13. visions now past, the Commons a party Ric. 2. in the Letter to the Pope.

The year succeeding, a Parliament is Par.14. Ric. 2. called, for the King would have advice with the Lords and Commons for the War with Scotland, and would not without their Counsels conclude a final peace with France. The like affembly for the same causes was the year ensuing, the Commons interesting the King to use a moderation in the Law of provisions, to please at this time their holy Father, so that the Statutes upon their dislike may again be executed; and that to

negotiate the peace with France, the Duke of Aquitaine may rather than ano-

ther be imployed.

To consult of the Treaty with France Parl.17. Ri.2. for Peace, the King in the seventeenth calleth a Parliament (the answer of the Lords is left unentred in the Roll) the Commons, upon their faith and allegiance charged, advised that with good moderation homage may be made, for Guien an appenage of the French Crown, so it trench not to involve the other pieces of the English Conquest, their

> answer is large, modest and worthy to be marked.

Henry 4.

Now succeedeth a man that first studied a popular party, as needing all to

support his titles.

He in the fifth year calleth a Parlia-Parl. S. Hen. 4. ment to repress the malice of the Duke Parl. 6. Hen. 4. of Orleance, and to advise of the Wars in Parl. 7, & 8. Ireland and Scotland (neither Counsels Hen. 4. in 19. or supplies are entred in the Roll) and to refift an invasion intended by France and Brittain he affembleth the State again; the like was the second year fol-

lowing for France.

Clauf. 7. H. 4.

& 20.

In this the Commons confer, for guard of the Sea, and make many Ordinances, to which the King affenteth, the peace with the Merchants of Bruce and Foins is debated, & a Proclamation published, as they resolved; by the Speaker the Commons complain of 96 pieces of

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importance lost in Guien the year before, In 33. need of the defence of the borders, and Sea coasts, to suppress the Rebellion in Wales, and disloyalty of the Earl of Northumberland; they humbly desire that In 57. the Prince may be dispatched into those parts with speed, and that the Castle of Manlion, the key of the three Realms might be lest to the care of the English, In 59. and not to Charls of Navarre a stranger, and to have a vigilant eye on the Scotish Prisoners.

In the tenth the Parliament is commanded to give their advice about the Truce with Scotland, and preparation against the malice of the French.

His Son, the wise and happy under-Hen. 5. taker, advised with the Parliament in the first year, how to cherish his Allies Parl. 1. Hen. 5. and restrain his Enemies; for this there In 2. was a secret Committee of the Commons appointed to conferr with the Lords, the matter being entred into a schedule touching Ireland, Wales, Scotland, Callis, Guien, Shipping, Guard of In 4. the Sea, and War, provision to repulse the Enemies.

In the second he openeth to the Par- parl. 3 Hen.5. liament his Title to France, a quarrel he would prosecute to death, if they allowed and aided, death is in his Assembly enacted to all that break the Truce, or the Kings safe conduct.

The year following peace being offe- Parl. 3. Hen. 5.

red by the French King, and the King of the Romans arrived to effect the work, the King refuseth any conclusion until he had thereunto advice and affent of the Lords and Commons, for which occasion the Chancellor declareth that Affembly.

Parl. 4 & 5. Hen. 5.

In the fourth and fifth, no Peace being concluded with France, he calleth the State together to confult about the War, concluding a Treaty of amity with Sigismund, King of the Romans, by allowance of the three Estates, and entred Articles into the Journal Rols.

Pasl.5 Hen.5.

The fame year, by the Duke of Bedford, in the Kings absence, a Parliament was called to the former purposes, as appeareth by the Summons, though in the Parl. 7 Hen. 5. Roll omitted. The like in the feventh.

The Treaty with France is by the Prelates, Nobles, and Commons of the Kingdom perused and ratified in the 11th. of his Reign.

Hen. 6. Rot. Parl. 2. Hen. 6.

His Son more holy than happy, fucceeded; adviseth him the second year with the Lords and Commons, for the well keeping the Peace with France; confulteth with them about the delivery of the Scottish King, and the conclusion of it is confirmed by common affent.

Rot.Pa.3. H. 6. And in the third year they are called to advise and confent to a new Article in the League with Scotland, for change of Hostages. And

And in the ninth, conclude certain Rot. Pa.9. H.6. persons by name to Treat a Peace with the Dolphin of France.

The Treaty at Arras, whither the Pope had fent as Mediators two Cardi-

nals not fucceeding.

The King in Parliament, Anno 14. Rot. Part. 14. sheweth he must either lose his Title, Hen. 6. Stile, and Kingdom of France, or else defend it by force; the best means for the prevention thereof he willeth them to advise him.

He summoneth again the next year Rot. Parl. 15. the State, to consult how the Realm Hen. 6. might be best desended, and the Sea safe

kept against his Enemies.

In the twentieth, the Commons exhibite a Bill for the Guard of the Sea, af-Parl. 20. H. 6. certain the number of Ships, affels Wages, and dispose Prizes of any fortune, to which the King accordeth; and that the Genouese may be declared enemies for affishing the Turks in the spoyl of the Rhode Knights, and that the priviledges of the Pruce and Hans Towns Merchants may be suspended, till compensation be made to the English for the wrongs they have done them, to which the King in part accordeth.

The King by the Chancellor decla-Parl. 23. H.6. reth in Parliament, Anno 23. That the Marriage with Margaret, the King of Sicils Daughter, was contracted for inducing the Peace made with France,

against

against which the Lords, as not by their advice effected, make Protestation, and enter it on the Roll.

Rot. Parl. 25. Hen. 6. in 3.

N. 6.

In the 25. the King intended to pass in Person into France, and there to treat a Peace with the King, adviseth with the Lords and Commons in Parliament, and Letters of Mart are granted against the

Brittains, for spoil done to the English

Merchants.

Parl. 27. H.6. The Lord Hastings, and Abbot of Glocester, declare in Parliament, Anno 27. the preparation of the French, the breach by them of the Peace, the weak defence of Normandy, and the expiration shortly of the Truce, requiring speedy advice and remedy.

In the 29. it was enjoined by Parlia-Parl. 29. H. 6. ment, to provide for defence of the Sea

and Land against the French.

It was commanded by the King to the Parl. 33. H. 6. States affembled, Anno 33. to advise for well ordering of his House, payment of the Soldiers at Callis, guard of the Sea, raising of the Siege at Barwick, made by the Scots against the Truce, dispoiling of the number of 13000 Soldiers, arrayed the last Parliament, according of differences amongst the Lords, restraining transportation of Gold and Silver, and acquitting the diforders in Wales; of all which, Committees are appointed to frame Bills.

Edward 4. Edward the Fourth, by the Chancellor, Parl. 7. E. 4. dedeclareth in his seventh year to the Lords and Commons, that having made peace with Scotland, entred League with Spain and Denmark, contracted with Burgundy and Britany for their ayd in the recovery of his right in France, he had now called them to give their Counsels in proceeding, which Charge in a second Sessions was again proposed unto them.

The like was to another Parliament Parl. 12. E. 4.

in his twelfth year.

After this time their Journals of Par-Hen. 7. liament have not been well preserved, Rot. Parli, or not carefully entred; for I can find of this nature no Record, until the first of Hen. 7. wherein the Commons, by Thomas Lovel their Speaker, Petition the King to take to Wise Elizabeth, Daughter to Edw. 4. to which the King at their request agreeth.

The next is the third of Hen; the 8, in Henry 8, which from the King, the Chancellor Parl. 3, H. 8, declareth to the three Estates the cause of that Assembly: The first to devise a course to resist the Invasion of the Scots, next how to acquit the quarrel between the King of Castile, and the Duke of Geldres his Allie; lastly, for assisting the Pope against Lewis King of France, whose Bull expressing the injuries done the Sea Apostolick, was read by the Master of the Rolls in open Parliament, The Chancellor, the Treasurer, and other

Lords

Lords sent down to the Commons to confer with them.

Rot. Parl. 32. Hen. 8.

Ex instrumen.

The last in the 32d. of the same year, where the Chancellor remembring the many troubles the State had undergone, in doubtful titles of Succession, declareth, that although the Convocation had judged void the marriage of Anne of Cleve, yet the King would not proceed without the Counsel of the three Estates: The two Archbishops are sent to the Commons with the Sentence sealed, which read, and there discussed, they pass a Bill against the Marriage.

In all these passages of publick Counfels, wherein I have been much affifted by the painful labour of Mr. Elfing, Clerk of the Parliament, and still observe that the Soveraign Lord, either in best advice, or in most necessities, would entertain the Commons with the weightiest causes, either forrain or domestique, to apt and bind them so to readiness of charge, and they as warily avoiding it to eschew expence; their modest answers may be a rule for ignorant liberty to form their duties, and humbly to entertain fuch weighty Counfels at their Soveraigns pleasure, and not to the wild fancy of any facti-I will add one forraign example to shew what use hath been formerly made by pretending Marriages, & of Parliaments to diffolve them, their first end served. Max-

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Maximilian the Emperour, and Ferdinand of Spain, the one to secure his possessions in Italy, the other to gain the Kingdom of Navarre, (to both which the French King stood in the way) projected a Marriage of Charls their Grand-child, with Mary the King of Englands Sifter, it was embraced, and a Book published of the benefits likely Trastat, matrito ensue the Christian world by this monial. 1510. match. Upon this ground, Ferdinando beginneth to incite Henry the 8th. to War with France, presents him with fuc- Ex literis orig. cours, and deligns him Guien to be the legator. mark; and Dorfer is fent with men and munition to joyn with the Spanish Forces then on the Borders of Navarre: the noise is, they came to affift Ferdinand in the Conquest of that Kingdom; which though false, gained such reputation, that Albret was disheartned, and Ferdinand possessed himself of that his Succeffors fince retained; his end ferved, the English Army weak and weather-beaten, are returned fruitless.

Maximilian then allureth the young Extract. Hrs. and active King to begin with France 8. & Maximion the other side; Teronen and Tournay lian. 1511. is now the object, whither Henry goeth with Victory, but better advised (with that pittance) makes an end by peace

with France, whose aim and heart was fet on Millain.

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A new bait the old Emperour findeth Ex traff. orig.

out to catch the Ambitious young manshe would needs resign unto him the Empire, too heavy for his age to bear: The Cardinal Sedunensis is sent over to sign the Agreement, which he did, and France must now again be made an Enemy. To prevent this danger Francis released his Title to Naples, and offereth Laogitia his Daughter to Maximilians Grandchild Charls, at Noyon: this is acted in the dark, and at Arnothe French Commissioners came up the

back stairs with 60000 Florins, and they engrossed Covenants, when the abused King of Englands Ambassador

Ex tract. orig.

Pace Legat. Cardinal returneth home, meeteth by Reg. Anglia. the way this foul play of his Master.

Ex literis Car. Sedunenfis.

Ex literis Carol. Reg. Hisp.

Cardinal returneth home, meeteth by the way this foul play of his Master, and writ to the King of England, not in excuse, but in complaint, Contra persidiam Principum, an honest Letter. Ferdinand and Maximilian dead, Francis and Charls are Competitors for the Empire. Henry the 8th. is courted for his help by both; the one with the tye of Alliance (for the Insant Dolphin had affyed Henry the 8ths Daughter) the other with the like, and Daughter, he will make his Daughter a Queen in prasente, which the Dolphin cannot do, and by his savour an Em-

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Ex literis car. To further France was but to win Imperat. origi. Ambition to prey upon all his Neighbours,

press.

bours, the English King is won, and Extract. winneth for Spain the Imperial wreath, Wind. 1512. which Charls in two Letters I have of Ex instru. orig, his own hand then thankfully confesfed.

From Aquisgrane he cometh Crowned in hast to England, Wedded at Windsor the King's Daughter, contracteth to joyn in an Invasion of France, to divide it with his Father in Law, by the River of Rodon, and Sweareth at the Altar in Pauls to keep faith in all.

Bourbon is wrought from France, and Ex Eteris Rientreth Provence with an Army, paid chardi Pace, with King Henries money; Suffolk pass- & Johannis eth with the English Forces by Pi- Russel. cardy: But Charles the Emperour, who should have entred Guyen faileth, drawing away Burbon from: a streight Siege of Marseilles, to interrupt Francis then entred Italy, and so the enterprize of France is defeated, the French King is at Pavie, taken Prisoner by Pescaro, led to Gron, hurried into Spain by the Emperours Galleys, and forced at Ma-

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drid to a hard bargain, without pri- Ex traff. Mavity of Henry the 8th. or provision of driftenfis 26. him, who had been at the greater Ex Rot. com. charge of that War, Now the Empe- Ruffel & Pace. rour affecteth that Monarchy that hath ever fince (as some say) infected the Austrian Family.

Rome, the fatal old Seat of Govern- Ex instru. ortg. ment, Carol. 5.

ment, must be the Seat of his Empire: Burbon, and after Moneado are directed to furprize it. Angelo, the observant Fryer, is fent before the Pope, configned

Ex infiru H. 8. by tae Emperours Election, who meant Bryano & Gar- (as his own instructions warrant) to dinem. refore that right again to the Imperial Throne.

Ex literis Cuthb. Tunstall. Epif. Lond. Legat. Hen. 8. in Hispan. Ex protestat. orig. Toledonens Parl.

Ex literis Car. Wolfey & Greg. Lufathis. Ex Instru. Signat. Ch. Im. Gonzado Ferdinand. Capel. fuo dat.24. Feb. Ex lib. N. N. N. Dom Car.

Ex literis intercept. a Com. Northumb. Custod. March. Scotia. in Arch. Weft. Ex tract. Cambrenf. 1529.

Charls will follow him from Barcellona with an Army; but before, he must call a Parliament at Toledo, whether by election or affection, I dare not divine, that Affembly maketh Protestation against their Masters Marriage with England, and affign him Isabella of Portugal for a Wife; the Instruments are sent figned by the Imperial Notary to Henry And Charls bemoaneth the the 8th. streight he is forced into by them; but before all this he had wrought from Rome, a Dispensation for his former out-hand Marriage; sending not long after Gonzado Ferdinando his Chaplain, to invite the Earl of Desmon to rebel in Ireland.

And to invite James the First, by promise of a Marriage to Christian of Denmarks Daughter, his Neece; to enter the English Borders, to busie the English King, for asking a strict accompt of that Ex tratt. orig. Indignity. Henry the 8th. with Providence and good fuccess over-wrought these dangers, and by the League of Italy he forced him to moderate Conditions

at the Treaty of Cambray, 1529. He being made Caput fæderin against the Em-

perour.

I may end your Honours trouble with this one Example, and with humble prayers, That the Catholique may have so much of Princely sincerity, as not to intend the like, or my good gracious Master a jealous vigilancy to prevent it, if it should, &c.

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THAT THE

SOVERAIGNS

PERSON

is Required in the Great

COUNCILS;

ASSEMBLIES OF THE

STATE,

As well at the Consultations as at the Conclusions.

Written by Sir Robert Cotton, Knight and Baronet.

LONDON, Printed in the Year, 1679.

Howay much d. Cand, doubled & who Hi (who way of phosins & a winning behav - (arriage low oll) ought wobi point as Di balis in i Hous of Kord: som i gg and all is mi Hous its its of som of spok warmly ag' is at lost the M. S. oflan following Track way foured out by the Thin Earl of Elix & county to E. Arlingson & others aft i kg upon with 2" was ofrested for y' K. Bringpr. S. nt; (ay of our money of Rivor siding the Jos Land. Sel disolat of 35. 17.4 Select

THAT THE

SOVERAIGNS

PERSON

is Required in the Great

COUNCILS,

OR

ASSEMBLIES

OF THE

STATE, &c.



INCE of these Assemblies few Diaries, or exact Journal Books are remaining, and those but of late, and negligently entred, the

Acts, and Ordinances only reported to Posterity are the Rolls, this question though clear in general reason, and conveniency, must be wrought for the particular, out of such incident proofs, as the Monument of Story and Records by pieces leave us. And to deduce it the clearer down, some essential circumstances

Ex Consiliis Reg. Saxon. Cantuar. Glanvil. lib. Ely.

Leges Ethelredi. Ingulphus. Croylandensis. Registra Mo-

Palatium Regale westm.

naster.

stances of name, time, place, occasion, and persons, must be in a general shortly touched, before the force of particular proofs be laid down. This poble body of the State, now called the Houses in Parliament, is known in feveral Ages, by feveral names, Concilia the Councils in the old times, after Magnum, Commune, and Generale, Concilium, Curia Magna, capitalis, and Curia Regis; sometimes Generale Placitum, and sometimes Synodi and Synodalia decreta, although aswell the causes of the Common-wealth as Church were there decided. The name of Parliament, except in the Abbots Chapters, not ever heard of until the Raign of King Fohn, and then but At the Kings Court were these Conventions usually, and the Presence, Privy-Chamber, or other room convenient, for the King in former times as now, then used; for what is the present House of Lords, but so, as at this time, and was before the firing the Palace at Westminster, about the seventeenth of Henry the eighth, who then and there refided.

Improbable it is to believe the King was excluded his own Privy Chamber, and unmannerly for guests to barr him the company, who gave to them their Regist. Eliensis. entertainment. It was at first as now Edicto Principis, at the Kings pleasure. Towards the end of the Saxons, and in

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the first time of the Norman Kings, it Annales Monaflood in Custom-Grace, to Easter, Whit- Beriorum. Sontide, and Christmas fixed. The Bi- Liber de Bello: shops, Earls, and Lords, Ex more, then Assembled (so are the frequent words in all the Annals) the King of course then revested with his imperial Crown by the Bishops and Peers affem- Regist. de wig. bling, in recognition of their preobliged faith and present service, until the unfafe time of King John, by overpotent and popular Lords, gave discontinuance to this constant grace of Kings, and then it returned to the un- Johannes Ecertain pleasure of the Soveraigns sum- wersden.

Matthew Paris. The causes then as now of such Hoveden. mons. Affemblies, were provisions for the support of the State in Men and Money, well ordering of the Church and Common-wealth, and determining of fuch causes, with ordinary Courts ne- Bratton. sciebant judicare (as Glanvill the grand Glanvill. Judge under Henry the second saith) where the presence of the King was still required, it being otherwise abfurd to make the King affentor to the Judgments of Parliament, and afford him no part in the confultation. necessity thereof is well and fully deduced unto us in a reverent monument not far from that grave mans time, in these Modas tenenwords, Rex tenetur omni modo personali- di Parliament. ter interesse Parliamento, nisi per Corporalem ægritudinem detineatur. Then to acquaint

acquaint the Parliament, of fuch occafion of either House, Cansa est quod solebat Clamor & Murmur effe pro absentia Regis, quia res damnosa & periculosa est toto Communitati Parliamenti & Regni, cum Rex à Parliamento absens fuerit, Nec se absentare debet, nec potest nisi duntaxat in Cansa supradicta. By this appeareth the defire of the State to have the Kings presence in these great Councils by exprefs necessity. I will now endeavour to lead the practice of it from the dark and eldest times to these no less neglected of ours.

Ex Registris Concil. Cantuaria. Ex Consilio Withredi Regist.

From the year 720. to neer 900. during all the Heptarchy in all the Councils remaining composed Ex Episcopis, Abbatibus, Ducibus, Satrapis, & omni dignitate optimatibus, Ecclesiasticis scilicet & secularibus personis pro utilitate Ecclesia, O stabilitate Regni pertractand. of them are Rege precedente and but one by deputy; and incongruous it were and almost non-sence, to bar his presence that is president of such an Affembly.

Ex Synodis & Ethelredi, Edgari. Ex Registr: Elien. Ex Registr. Abingtonensi. Chronicon de Waverly.

The Saxon Monarchy under Alfred, legibus Alfredi, Ethelred, and Edgar in their Synods or Placita generalia went in the same practice and fince. Thus Ethelwald appealed against Earl Leofrick; From the County and generale Placitum before King Etheired and Edgira the Queen, against Earl Goda to Eldred the King at London,

Congre-

Congregatis Principibus & sapientibus An-Gesta Sansti glia. In the year 1502. under Edward Edward Gallice. In the year 1502. under Edward lice. the Consessor, Statutum est placitum lice. magnum extra Londinum quod Normanni ex Francorum consutud. Parliamentum appellant, where the King and all his Alured. Riva-Barons appealed Goodwin for his Bro-lensis, vita Edther Alureds death, the Earl denyed it, soris. and the King replyed thus, My Lords, soris. you that are my liege men, Earls and Barons of the Land here Assembled together, have heard my Appeal and his Answer, unto you be it lest to do right betwixtus.

At the great Council at Westminster Regist. Cantu1072. in Easter week, the cause of the arien.
two Archbishops Lansrank and Thomas,
ventilata fuit, in presentia Regis Willielm. And after at Windsor, sinem accepit
in presentia Regis. At the same feast in
the year 1082. (the usual time of such
Assemblies) the King, the Archbishops,
Bishops, Abbots, Earls, the chief Nobility of the Kingdom present (for so
are the words of the Records) the cause
between Arsast Bishop of Norway, and Regist. Sansti
Baldwine Abbot of Bury was also ar Edmundi.
gued, Et ventilata in publica jubet Rex
teneri Judicium Cansis auditis Amborum.

The diligence of his Son, the Learned Henry the first, in executing of this part of his Kingly function is commended to Posterity, by Walter Mape, a Learned walterus Mape man, trained up, and in favour with de nugis curi-Henry alium.

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Henry the second, in these words, Omnia Regali more moderamine faciebat, neminem volebat agere justitia vel pace. Constituerat autem ad tranquillitatem omnium ut diebus vacationis, vel in domo magna subsidio copiam sui faceret, usque ad boram fextam, (which was till twelve as we now account) secum babens Comites, Baronet, Proceres, & Vavasores, to hear and determine causes, whereby he attained the surname of Leo Fustitie in all stories, and so out-went in quiet guidance of the State his best progenitors. The next of his name that succeeded is remembred every where for his debates and his disputes he had in person with Vita Tho. Can- Thomas the Archbishop, and others of his part, at the great Councils both at London, Clarendon, and Northampton, Benedittio Abb. for redress of the many complaints of the Commons, against the outrages and extortions of the Clergy; one thoufand five hundred and fifty feven, Die Pentecostis apud sanctum Edmundum, the same King Diademate Insignitus, with the Bishops, Abbots, Earls, and Barons of the Kingdom, fate daily himself and heard all the debates, concerning the Liberties and Charters of Battle The interlocutory Speeches as

well of the King, as Lords and parties

are at full related in a Register of that

Church.

Hen. Huntingdon.

Malmsbury.

tuar.per Fitz-Stephanum.

Gesta Hen. 2. Authore.

Regist. Monast. de Bello.

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The fute between the Church of Lin- Regist. Lincoln and Saint Albanes, in prafentia coln. Regis Henry, Archepiscop. & Episcop. omnium Anglia, & Comitum & Baronum Regni, was at Westminster debated and ended: And had a love of memory and truth been a protector of the publick Records of the State, as awe of the Clergies censure was a guard to theirs, in tempestuous times, we had not been now left to the only friendthip of Monks diligence; for example in this kind. At Liber Burtoni-Lincoln the Archbishops, some Bithops, enf. Monasterii. but all the Earls and Barons of the Realm, una cum Rege Johanne congregati ad colloquium de concordia Regis Scotie, saith the Register of that Church.

This use under King Henry the third, Rot. Class. heedeth no further proof, than the H.3. Writ of furnmons (then framed) expressing that Kings mind and practice; It is Nobiscum & Prelatis & Magnatibus nostris quos vocari fecimus super præmissis tractare & Confilium impendere, which word Nobiscum implieth plainly the Kings presence; what the succeeding practice was, from the fifteenth year of the second Edward, the proper Records of this inquiry (the Journal Books being loft) I am enforced to draw from out the Rolls of Acts, wherein formetimes by chance they are remembred. Edward the second was pre-

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Rot. Parl. 15. fent in Parliament in the fifteenth year of his Reign at the complaint against the Spencers, and at the second Parliament that year, for the repeal of that banishment.

Rot. Parl. 4. In the fourth of Edward the third, the King was present at the accusation of Roger Mortimer, but not at the Tryal.

Rot. Parl. An- And the next year in the treaty of the no 5. Edw. 3. French affairs.

In the fixth year Intererat Rex in Caufa Johannis de Gray & Willielmi de Zous. The same year the second day in Parliament, the King was present at the debate about his Voyage into Scotland.

Rot. Parl. AnIn the fifteenth year the King in the
no 15. Edw. 3. Painted Chamber fitting with the Lords
in consultation, the Archbishop after
pardon prayed, that for better clearing
himself, he might be tryed in full Parliament by his Peers; which was granted.

Rot. Parl. An- In the seventeenth in Camera Alba, no 17. Edw. 3: now the Court of requests, Rex cum magnatibus conveniunt Communes super negotiis Regni.

chronicon Henrici Knighton. the King departed from the Parliament in some discontent, when after some time, Lords are sent to pray his presence, and inform his Majesty that if he forbear his presence amongst them

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forty days, that then Ex antiquo Statuto, they may return absque domigerio Regis, to their several homes.

Henry the fourth began his first Parli- Rot. Parl. Anament the first of November, and was no 1. Hen. 4. the twenty seventh of the same month at a debate about the Duke of Brittany, the thirtieth day the Cause of the Archbishop of Canterbury was before him proposed only.

The third of November he was at the Rot. Parl. Andebate, whether the Commons had right no 2 Hen. 4.

of Judicature, yea or no.

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On the tenth he was with the Lords Rat. Parl. 10. in their consultation about the expedit Hen. 4. tion against the Scots, the creation of the Dake of Lancaster, and prohibition of a new fect for entring his Kingdom. Some Ordinances were at this time consulted of before him about the staple, and the sentence against Haxey after dispute revoked.

This King began his second Parlia- Anno. 2 Hen. 42 ment, the twentieth of January, and on Rot. Parl. the ninth of February was present to make agreement betwixt the Bishop of Norwich, and Thomas of Erpingham.

On the twentieth day of the same month he was present at Council for repressing the Wels Rebels; for revocation of stipends, and concerning the Priors Aliens,

On the 26. they advise before the

King of the Ciftertians order.

On the second of March of the Statute of Provisions, the Keeper of the privy Seal, of relieving the two Universities.

Ret. Parl. Anno 4 Hen. 4. And on the ninth of March, they mediate before the King a reconciliation betwixt the Earl of Rutland and the Lord Fitzmater.

Rot. Parl. An-

He also began a Parliament in the fifth year upon the fifteenth of January, and on the twentieth they advise before the King of guarding the Seas, and the Welsh Rebellion.

On the eighth of February the Earl of Northumberland is charged before the King, and in his presence, and by his permission, divers, of whom he knew no harm, were removed from the Court.

The next day at the Petition of the Commons, he took upon him to reconcile the Earls of Northumberland and Westmerland. And on the two and twentieth of February of the Earls of Northumberland and Dunbarre.

Rot. Parl. Auno 27 Hen. 6.

In a Parliament of 27 of Hen. the 6, a Challenge of feat in Parliament betwixt the Earls of Arundel and Devonshire, was examined and appointed by the KING with the advice of the Lords.

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of hi King himself (but not in place of

judgment) adjudged his banishment.

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In that great Capital cause of the Rot. Parl. An-Duke of Suffolk, the 28 of Hen. 6. I no 28 Hen. 6. find not the King once present at the debates, but the Duke appealing from his tryal by Peerage, to the King, is brought from out of the House of Lords to a private Chamber, where the King after the Chancellor in gross had declared his offence, and his refusal, the

By the Rolls of Edward the fourth, it Rot. Parl. Anappeareth that he was many days, be-no. Edw. 4.

sides the first and last, in Parliament, and there was entred some Speeches by him uttered, but that of all the rest is most of remark, the reporter then present thus tells it. This of the Duke of Registrum Clarence and the King, Tristis disceptationiner duos tanta bumanitatis Germanos, nemo arguit contra ducem nisi Rex, nemo respondit Regi nisi dux; some other testimonies are brought in, with which the Lords are satisfied, and so Formarunt in eum sententiam damnationis, by the mouth of the Duke of Buckingham, the Steward of England, all which was much distassed by the House of Commons.

The Reign of Henry the seventh Ex Chartis affords us upon the Rolls to one exam-Anno. 12 H. 7. ple. The Journal Books are lost, except so much as preserves the passages of eight days in the twelfth year of his Reign; in which the King was

3 some

Ex Regist. Camera Stellata. fome days present at all debates, and with his own hand the one and thirtieth day of the Parliament, delivered in a Bill of Trade then read, but had the memorials remained, it is no doubt but he would have been as frequent in his Great Council of Parliament, as he was in the Starr-Chamber, where by the Register of that Court it appeareth as well in debate of private causes, that touch neither life nor Member, as those of publick care, he every year of all his reign was often present.

Of Henry the eighth, memory hath not been curious, but if he were not often present, peradventure, that may be the cause, which the learned Recorder Fleetwood, in his presace to the Annals of Edward the fifth, Richard the third, Henry the seventh, and Henry the eighth hath observed in the Statutes made in that Kings days, for which cause he hath severed their Index from the former: And much lay in the will of Wolfey, who ever was unwilling to let that

King see with his own eyes.

Memorial. Ed. 6. propria manu.

Ex Annalibus

Fleetwood Recordat. Lon-

don.

Edward the fixth, in respect of his young years may be well excused, but that such was his purpose it appears by a memorial of his own hand, who proportioning the affairs of Council to several persons, reserved those of greatest weight to his own presence in these words. These to attend the matters of State,

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that I will fit with them once a week to hear the debating of things of most impertance.

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Unfitness, by sex, in his two succeeding Sisters, to be so frequently present as their former Ancestors, led in the ill occasion of such opinion and practice.

Most excellent Majesty, your most humble servant in discharge of obedience and zeal, hath hastned up this abstract, which in all humility he offers up unto your gracious pardon. Presumption to enter the Closet of your Council is far from his modesty and duty; what hath been your powerful Command, he hath made his Work, what is fit to be done with it, is only your divine judgment. He dares not fay Presidents are warrants to direct; The fuccess (is as worthy observation) as the knowledg of them, some times have made ill example by extension of Regal power, through ill Counsels with ill success. Some as bad or worse when the people have had too much of that, and the King too little, the danger no less. To cut out of either of these patterns to follow, were but to be in Love with the mischief, for the example. The clearer I present this to your Highness, the nearer I approach the uprightness of your heart, the bleffed fortune of your happy Subjects: Pardon, most Sacred Majesty, that I offer up unto your admired wisdom, my weak, but dutiful observations out E 4

of all the former gathering. In Confultations of State and decisions of private plaints, it is clear from all times, the King was not only present to advise and hear but to determine also; in Cases Criminal, and not of Blood, to bar the King a part were to exclude him the Star-Chamber, as far from reason as ex-The doubt is then alone in ample. Crimes meer Capital; I dare not commend too much the times that loft thefe patterns, either for the Causes or Effects; but wish the one and other never more. To proceed by public Act of Commons, Peers, and King, was most usual. peals are given by Law of Hen. 4. of this now in debate, the way I fear, as yet obscure, as great advice to State is is needful for the manner, as for the Justice. The example in the cause of the Duke of Suffolk, 28 Hen, 6. where the King gave judgment was protested against by the Lords. That of the Duke of Clarence of Edw. 4. where the Lords and the high Steward the Duke of Buckingham gave judgment, was protested against by the Commons; in both of these the King was sometimes present, but which of those may suit these times I dare not guess.

That of Primo Rich.2. of Gomeneys and Weston, accused by the Commons plaint for Treason, was tried by the Lords in absence of the King, but sentenced by

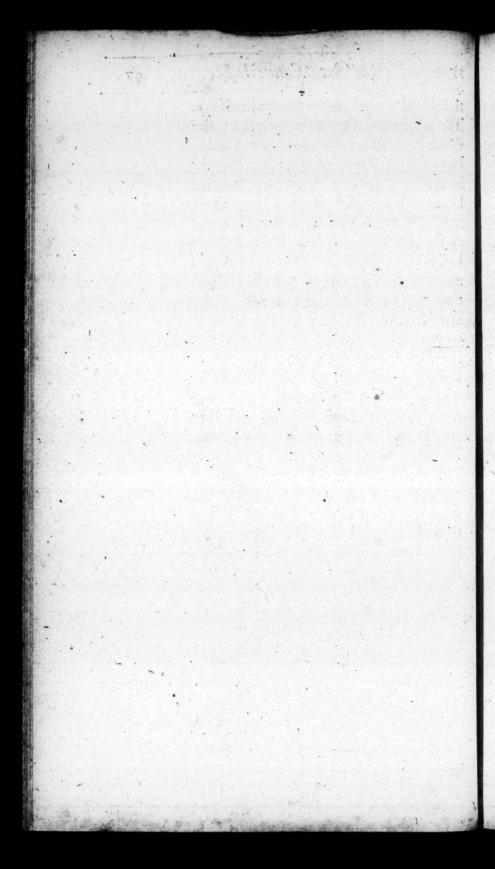
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the Lord Scroop, Steward for the King. The Accused were of the rank of the Accusers, Commons and not Lords: How this will make a Prefident to judg in causes Capital, a Peer of Parliament, I cannot tell. But if I should conceive a way answerable as well to Parliament as other Courts, if the King and the Lords were Tryers, and the Commons affenters to the judgment to hear together the Charge, and Evidence; The Lords as doth the Jury in other Courts, to withdraw, to find the Verdict, and then the Steward, for the King, to pronounce the Sentence. It passeth so by way of Act and Course that carrieth with it no exception, and likely to avoid all curious questions of your Highness presence there.

If your humble fervant hath in this expression of his desire to do you service, presumed too far, his Comfort is, that where zeal of duty hath made the fault, benignity of goodness will grant

the Pardon.

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DISCOURSE

OF THE

LAWFULNESS

OF

COMBATS

To be performed in the presence

OF THE

KING,

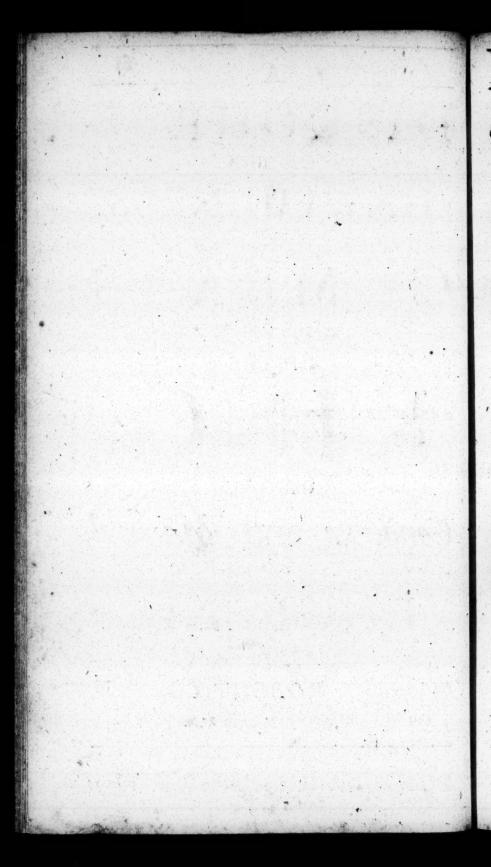
OR THE

Constable and Marshal

ENGLAND.

Written by Sir ROBERT COTTON, Knight and Baronet. 1609.

LONDON: Printed in the Year. 1679.



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DISCOURSE OF THE

LAWFULNESS

O F

COMBATS.

To be performed in the presence of the KING, &c.

COMBAT.



Here differences could not combat.

be determined by legal Ex lib. 3.

proof or testimony, there const. Car.

was allowed the party bus.

his purgation;

Braft.l. 3.c.18.

fol. 137. tit.

Which was either Canonical or Legal.

The first by Oath, and called Canonical, because it is Lawful.

The

COTORA.

fol. 17. b.

legem impiam

Jumus.

The other, which was either Per aquam candentem, ferrum ignitum, or Duellum, called vulgare, because it was brought Leges Lombard. in by the barbarous people, without the pretext of any Law; until the Gotbish Luitprando Reand Lombard Kings, feeing their Subsuetudinemgent. jects more addicted to Martial Discige. Propter conpline than to Civil Government, revitare non pos-duced those trials to Form and Rule: Which Constitutions are now incorporated in the Civil Law.

From the Northern Nations which the Saxons and Normans, or Northmanni are part) it was brought into this Land; and although it grew long ago, both by the decrees of Defide-

1. 9. C. II. Lib. 5. Decret. 2. part. ca. I. 94. 40.

De Papin. Hist. rius, Luitprandus, and the Mother Church discontinued amongst the Lombards as soon as they grew Civilized in Italy; yet it continued till of late with us, as a mark of our longer Barbarism: Neither would we in this obey the See of Rome, to which we were in many respects observant Children; which, for that in the Duel, Condemnandus fape absolvitur, & quia Deus tentatur, decreed so often and streightly against it.

In England this fingle Combat was either granted the party by licence extrajudicial, or legal process. The first was ever from the King as a chief flower of his Imperial Crown, and it was for

exercise of Arms especially.

Rich. I. Parl. Thus did Richard 1. give leave for Anno 20. Tour-

Tournaments in five places in England; inter Sarum & Winton ; inter Stamford & Wallingford, &c. ita quod paxterra nostra non infringetur, nec potestas justiciaria minorabitur: For performance whereof, as likewise to pay unto the King according to their qualities or degrees, a fum of money proportionable, and that of a good value and advantage to the Crown, they take a folemn Oath.

The like I find in 20 E.1. and 18 E.3. 20 E: 1. granted Viris militaribus Comitatus Lin- Pat. 18. E. 3. coln, to hold a Just there every year. Richard Redman, and his three Companions in Arms, had the licence of Rich. 2. Pat. part 3. Hastiludere cum Willielmo Halberton, cum Anno 19. R. 2. tribus socius suis apnd Civitat. Carliol. The m. 16. like did H. 4. to John de Gray; and of H. 4. m. 8. this fort I find in records, examples

plentiful.

Yet did Pope Alexand. the fourth, following also the steps of his Predecessors, Innocentius & Engenius, prohibit throughout all Christendom, Detestabiles nundinas vel ferias quas vulgo Torniamenta vocant, in quibus Milites convenire solent ad oftentationem virium suarum & audacia, unde mortes hominum & pericula animarum Sape conveniunt. And therefore did Gregory the tenth fend to Edward the first his Bull pro subtrabenda Regis præsentia à Torniamentis à partibus Francia, as from a spectacle altogether in a Christian Prince unlawful : For, Gladiatorum sce- Lastan. divin.

leribus Instit. cap. 6.

St. Cyp. l. I. Ep. 2.

leribus non minus cruore profundit qui Spectat, quam ille qui facit, faith Lactantius. And Quid inhumanius quid acerbius dici potest, saith St. Cyprian, then when homo occiditur in voluptatem hominis, & ut quis possit occidere peritia est, usus est, ars est. Scelus non tantum geritur, sed docetur. Disciplina est ut perimere quis possit, & Gloria quod perimunt.

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Eufeb. in vita. Constant. 1. 3. Sozomen. l. I. c. 8. 1. 2. Col. & Glad. Ex Cod. Theodof. 1.5. C. 26.

And thererefore great Constantine, as a fruit of his conversion (which Honorius his Christian successor did confirm) established this edict : Cruenta spettacula in otio civili & domestica quiete non placent: quapropter omnino Gladiatores effe probibe mus. And the permission here amongst us no doubt, is not the least encourage ment from foolish confidence of skill, of fo many private quarrels undertaken. Combats permitted by Law, are ei-

ther in causes Criminal or Civil, as in appeals of Treason, and then out of the Court of the Constable and Marshal, as that between Effex and Montford, in the reign of Henry the first, for forsaking the Kings Standard.

Foselinus de Brackland cap. 12. H. I.

That between Audley and Chatterton for betraying the fort of Saint Saviours in Constant, the eighth year of Richard R. 2. Memb. 8. the second.

Rot. Vascon. Anno 9. H. 4.

2 Part. pat. 8.

And that of Bartram de Usano, and John Bulmer, coram Constabulario & Mariscallo Anglia de verbis proditoris, Anno 9. H. 4. The form hereof appeareth in the Plca

Plea Rolls, Anno 22. E. I. in the case of Veffey: And in the Book of the Mar- Placita coram shals Office, in the Chapter Medus faci- Rege 22. E. 11

ciendi Duellum coram Rege.

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In Appeals of Murther or Robbery, the Combat is granted out of the Court of the Kings Bench. The Presidents are often in the books of Law; and the form may be gathered out of Bracton, and the printed Reports of E. 3. and Bratt.l.3. c.21. H. 4. All being an inhibition of the Anno 17. E.3. Norman Customs, as appeareth in the Ex consuetud. 68th. Chapter of their Customary; Duc. Norman. from whence we feem to have brought cap. 63. it

And thus far of Combats in Cases Criminal.

In cases Civil, it is granted either for Title of Arms out of the Marshals Courts as between Richard Scroop and Sir Ro- Tit. de Equela bert Grosvenor, Citfilt, and others; Or multri fol. 145. for Title of Lands by a Writ of Right in apud R. G. C. the Common - Pleas, the experience whereof hath been of late; as in the Case of Paramour; and is often before found in our printed Reports, where Reports Anno the manner of darraigning Battail is 1 H. 6. Dyer likewise; as 1 H. o. and 13 Eliz. in the L. Dyer expressed.

To this may be added, though beyond the Cognisance of the Common Law, that which hath in it the best pretext of Combat, which is the faving of Christian blood, by deciding in fingle fight, that which

Breve Reg. origo

Anno 13. Elici

which would be otherwise the effect of

publick War.

Rog. Hoveden Rot. Fran. Anno 7. R. 2. m. 21. Compane de la jaughe Regali & Spagna. f. 110. Joan. de Molina Chron. de Loys Reg. de Aragon. fol. 43. Bula Martini 5. dat in Kal. Mail Anno Pontific. 8.

Such were the Offers of R. 1.E.3. and & Adam Meri R. 2. to try their right with the French muth in vita E. King body to body. And so was that between Charles of Arragon, and Peter of Terracone, for the Isle of Sicilie, which by allowance of Pope Martin the 4th. and the Colledge of Cardinals, was agreed to be fought at Burdeaux in Aquitain. Wherein (under favour)he digrefsed far from the steps of his Predecessors, Eugenius, Innocentius, and Alexander, and was no pattern to the next of his name, who was fo far from approving the Combat between the Dukes of Burgundi and Glocester, as that he did inhibit it by his Bull; declaring therein, that it was Detestabile genus pugnæ, omni divino & humano jure damnatum, & fidelibus in terdictum; And he did wonder & grieve, quod ira, ambitio, vel cupiditas honoris humani ipsos Duces immemores faceret Legis Domini & Salutis eterne, qua privatus efset quicunque in tali pugna decederat : Nam sape compertum est superatum fovere justiti am: Et quomodo existimare quisquam potest rectum judicium ex Duello, in quo inimicus Veritatis Diabolus dominatur.

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And thus far of Combates, which by the Law of this Land, or leave of the Soveraign, have any Warrant.

It rests to instance out of a few Records cords, what the Kings of England, out of Regal Prerogative have done, either in restraint of Martial exercises, or private quarrels, or in determining them when they were undertaken: And to shew out of the Registers of former times, with what eye the Law and Justice of the State did look upon that Subject, that durst assume otherwise the Sword or Scepter into his own hand.

The restraint of Tournaments by Pro- Placita anno clamation is so usual, that I need to re- 29. 47, 1. E.I.

peat, for form fake, but one of many.

The first Edward, renowned both for his Wisdom and Fortune, Publice fecit proclamari, & firmiter inhiberi, ne quis, sub forisfactura terrarum & omnium tenementorum, torneare, bordeare, justas facere, aventuras quarere, seu alias ad arma ire prasumat, sine Licentia Regis speciali.

By Proclamation R. 2. forbad any but Rot. clauf. anhis Officers, and some few excepted, to no 19. R. 2. carry any Sword, or long Battard, under dat. 26. Feb.

pain of forfeiture and Imprisonment.

The same King, in the 19th. of his claus in dorso reign, and upon the Marriage with the 19. R. 2. French Kings Daughter, commanded by Proclamation, Ne quis Miles, Armiger seu alius Ligeus aut Subditus suus, cujus cunque status, aliquem Francigenam, seu quemcunque alium qui de potestate & obedientia regis existerit, upon what pretence soever, ad aliqua facta Guerrarum, seu actus armorum exigat, sub forisfactura omnium que Regi forisfacere poterit. F 2 And

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And as in the Kings power it hath ever rested to forbid Combates, so it hath been to determine and take them up.

60m. St. Alban. 22. R. 2.

Thus did R. 2. in that so memorable quarrel between Mombray and Hereford, by exiling them both. And when Sir John de Anestie, and Tho. de Chatterton, were ready to fight, eandem querelam Rex in manum fuam recepit, faith the Record.

2 Pars pat. anno 8. R. 2. Rot. Vascon. anno 9. H. 4. m. 14.

And De mandato Regis direptum est prælium inter Johannem Bolmer, & Bartramum de Vesana in the time of Henry the fourth.

Sir John Fitz-Thomas being produ-

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who

ced before the Earl of Glocester, Deputy of Ireland, and there Challenged by Sir William de Vessy to have done him wrong, in reporting to the King, that Sir William aforesaid should have spo-Rege, 22. E. 1. gainst the King defamatory words, of which Sir John there presented a Shedule: Willielmus, audito tenore Schedula prædictæ, dementitus est prædictum Johannem, dicendo; mentitus est tanquam falsus, & proditor, & denegavit omnia sibi imposita, & tradidit vadium in manum Justiciari, qui illud admisit. Et prædictus Johannes advocavit omnia & dementitus est simil. dictum Willielm. Whereupon the Combat was granted, and the time and

> place inrolled: but the Process was adjourned into England before the King;

Placita coram

who with his Council examining the whole proceeding, and that Quia Willielmus attachiatus fuit ad respondend. 70hanni prædicto super diffamatione principaliter, & non sit citatus in Regno isto placi- Rot. Parl. anno tare in Curia Regis, placita de diffamatio- 23. E. 1. nibus, aut inter partes aliquas, Duellum concedere in placitis de quibus cognitio ad curiam Regis non pertinet; And for that the Judge, vadia predictorum Johannis & Willielmi cepit priusquam Duellum inter eos consideratum & adjudicatum fuit, quod omnino contra legem est & consuetudinem Regni: Therefore, per ipsum Regem & Concilium concordatum est, quod processus totaliter adnulletur: And that the faid John and William eant inde fine die; salva utrique corum actione sua, si alias de aliquo in prædicto processu contento loqui voluerint.

In a Combat granted in a Writ of right, Philip de Pugil, one of the Champions, oppressus multitudine hominum se defendere non potuit: Whereupon the people against him in perpetuam defamationem suam in eodem Duello Creantiam proclamabant, which the King understanding, Assensu Concilii statuit, quod prædict. Philippus propter Creantiam prædict. liberam legem non omittat, sed omnibus liberis actibus gauderet, sicut ante Duellum gaudere con-

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What penalty they have incurred, that without law or license have attempted the practice of Arms, or F 2 their

their own Revenge, may somewhat appear by these few Records following.

Pat. in dors. 4.
H. 3.
Conc. Trid. Sess.
9. Tit. Decreta
Reform. Ex
Con. Biturien.
fol. 1022.
Claus. anno 3.
E. I. m. 2.

William Earl of Albemarle was Excommunicated Pro Torniamento tento contra praceptum Regis. To which agreeth at this day for the Duel the Council of Trent,& that held at Biturio in Anno 1584 John Warren, Earl of Surrey was fined at

a thousand marks pro quadam transgressione in insultu facto in Alanum de la Zonch.

Parl. anno 24. H. 6. Talbois was committed to the Tower for attempting to have slain the Lord Crommel.

And because Robertus Garvois insultum fecit, & percussit Edwardum siltum Willielmi, inquisitio facta est de omnibus tenementis & catallis prædicti Roberti.

Edw. Dallingrige accused by Sr. John St. Leger before the Kings Justices pro venatione, & aliis transgressionibus, answered, that these accusations were false, and threw down his Glove, and challenged distrationare materias pradictas versus pradictum Johannem per Duellum. Sed quis contra legem terra vadiavit inde Duellum, he was committed to Prison, quousque sa tisfaceret Domino Regi pro contemptu.

Placita de quo warranto anno 3. R. 2. Sussex.

> Sir Nicholas de Segrave, a Baron, Challenged Sir John de Cromwel, and contrary to the Kings prohibition, because he could not fight with him in England, dared him to come and defend himself in France: therein (as the Record saith) subjecting

iecting as much as in him lay, the Realm of Engl. to the Realm of France, being stayed in his passage at Dover, was committed to the Castle, & brought after to the Kings Bench, & there arraigned before the Lords, confessed his faults, & submitted himself to the King, de alto & basfo:Wherefore judgment is given in these words, Et super boc Dominus Rex volens Placita coram babere avisamentum Comitum, Baronum, Rege Trin. 33. Magnatum, & aliorum de confilio suo, in- E. 1. junxit eisdem in bomagio, fidelitate & ligeantia quibus ei tenentur quod ipfi considerent qualis pæna pro tali facto fuerit infligenda. Qui omnes, babito super hoc confilio, dicunt quod hujusmodi factum meretur pænam amissionis vita, Whereupon he was committed to the Tower, & Ro. Archard, that attended him in France, was committed toprison, arraigned, and fined at 200. marks. In the end, and after much intercession, the L. Segrave was pardoned by the King, but could not obtain his liberty, until he had put in fecurity for his good behaviour. But this course holdeth proportion

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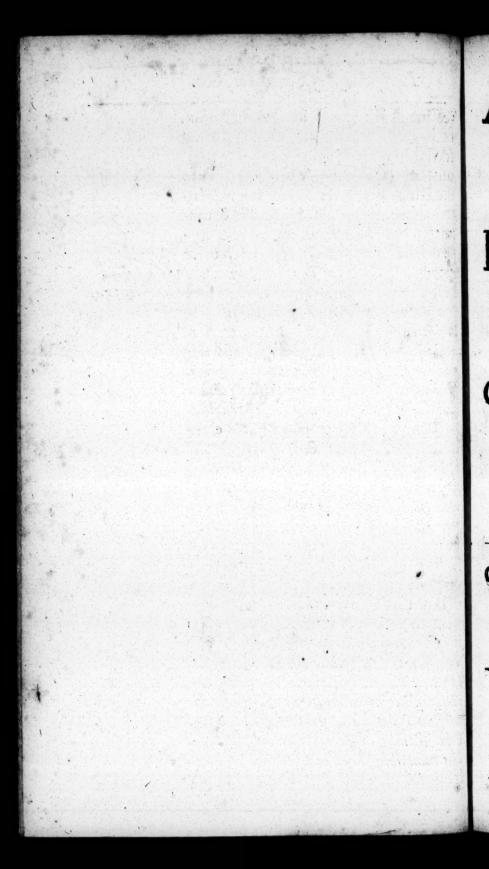
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with an antient law made by Lotharius
the Emperor, in these words, De his qui
discordiis & contentionibus studere solent,&
in pace vivere noluerint,& inde convicti fue- Ex lege Longorint, similiter uolumus,ut per sidejussores ad bard. 45. circa
nostrum Palatium veniant, & ibi cum nostris sidelibus considerabimus quid de tali-

bus hominibus faciendum sit.

A



ABSTRACT

Of the Question of

PRECEDENCY

BETWEEN

ENGLAND

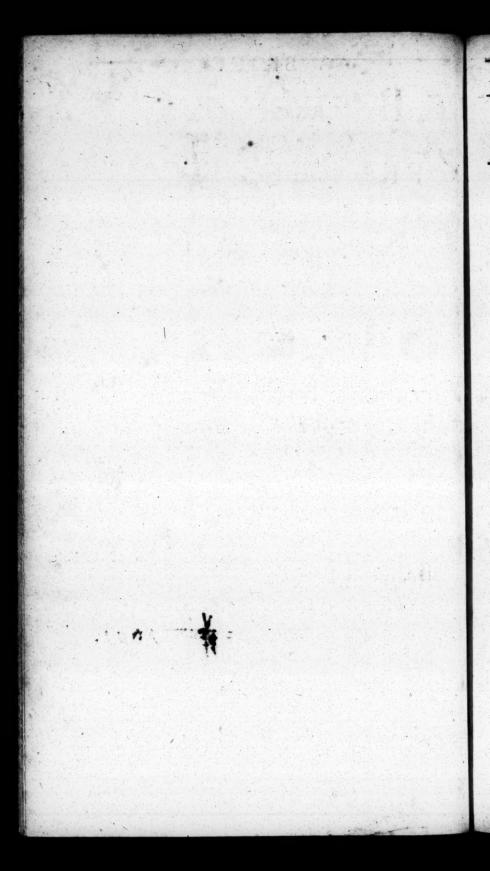
SPAIN.

Occasioned by Sr. Henry Nevil the Queen of Englands Ambassador, and the Ambassador of Spain, at Calais, Commissioners appointed by the French King, who had moved a Treaty of Peace in the 42. year of the same Queen.

Collected by Robert Cotton Esq; at the commandment of her Majesty.

Anno Domini, 1607.

LONDON,
Printed in the Year, 1679.



A BRIEF

ABSTR ACT

Of the Question of Precedency between England and Spain, &c.

Precedency of the King in respect of (person place Antiquity of Government. Eminency of the Throne Royal. Nobility of blood Antiquity as a or Christian Kingdom.

Prece-

Precedency of England in respect of the Antiquity of the Kingdom.



O feek before the decay of the Roman Empire the antiquity of any Kingdom is meer vanity, when as the Kingdoms of Chrib th for go y

ftendom, now in being, had their rifing from the fall thereof; at which instant Vortigern a Native of this Isle, first established here a free Kingdom four hundred and fifty years after Christ, and so lest it to the Saxons, from whom her Majesty is in descent Lineal; and it is plain, that as we were later than Spain reduced under the Roman yoak, so we were sooner infreed.

Subsequence of Spain.

Spain, fince the diffolution of the Roman Empire entituled no King, till of late, for Atalaricus from whom they would, upon flender warrant, ground their diffent, was never stiled Rex Hispania, but Gothorum, and the Kingdom of Castile,

Castile, wherein the main and fairest Rodericus antiquity of Spain rested, begun not Sanctius. before the year of Christ 1017. whereas pag. 312. they were but Earls of Castile before; so that the Kingdom of the English began (which was always as Beda obser-Beda. veth a Monarch in a Heptarchie) 460. years at the least before the Kingdom of Castile or Spain.

Precedency of England in respect of Antiquity of Christian Religion.

JOSEPH of Arimathea planted Christian Religion immediately after the Baronius. passion of Christ, in this Realm.

And Aristobulus one of them menti- Dorotheus; oned by Saint Paul, Romans 6. was Episc. Brittanorum, and likewise Simon Zelotes.

The first Christian King in Europe Beda. was Lucius Surius.

The first that ever advanced the Pa-Baronius & pacy of Rome, was the Emperor Con-Bantinus born at York. Of whom in the stantini.

Roman Laws near his time is written,

Qui veneranda Christianorum side Romanum munivit imperium; And to him peculiarly more than to other Emperors are these Epithetons attributed, Divus Diva In inscription memoria, divina memoria orbis Liberator, nibus antiquis, quietis fundator, Reipublic. instaurator, publica

publice libertatis auctor, Magnus Maximus, Invictus; Restitutor urbis Roma,

atque orbis.

Fasciculus temporis.

And there have been more Kings and Princes of the blood Royal, Confessors and Martyrs in England, than in any one Province in Europe.

And from Ethelbert King of Kent, (Converted Anno 596) until this day, Christianity hath been without inter-

ruption continued.

Subsequence of Spain.

Tarapha.

In the time of Claudius, Saint Fames preached in Spain, but gained only nine So did he in Ireland, as Vincentius faith; and they cannot count Christian Religion to be then planted in Spain, which shortly after was first tainted with the Herefie of Priscilian, then with Gothish Arianism, and after defaced with Moorish Mahumetism from 707 years after Christ, in continuance 770 years, until Ferdinando, King of Arragon, and Castilia utterly expelled the Moors.

Tar apha.

Precedency of England in respett of the more absolute Authority Political.

THE Queen of Englands power abfolute in acknowledging no fuperior,

rior, nor in vassallage to Pope or Empe-Eulogium lib.5.
ror. For that subjection which by King
John was made to Innocentius the third,
after in Parliament, Per praceptum Domini Papa septimo Julii, Cum sidelitate &

bomagio relaxatur omnino.

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Sir Thomas Moore in his debellation, saith, the Church of Rome can shew no such deed of subjection, neither that the King could grant it of himself. And Eugubinus in his defence of Constantines Ex legibus donation, nameth not England, where he Santti Edwarrecited all the seodary Kingdoms of the Papacy; the Peter-pence were not duties nuti.

Ex legibus Capution, but Regis larga benignitas: Parem non habet Rex Anglia in Regno suo; multo fortius nec superiorem habere debet, saith Bracton.

Ipse non debet esse sub homine, sed sub Braston. Deo, & babet tantum superiorem Judicem Deum: Likewise in appointing Magistrates; pardoning Life, Appeal, granting priviledges, taking homage; and his Jura Majestatis not limited in censu nummorum, Bello judicando, Pace ineunda.

Eleutherius the Pope, 1400 years ago, in his Epistle to Lucius King of Brittain, stiled him Vicarius Dei in regno suo, so is the King of England in Edgars Laws; Baldus and Baldus the Lawyer saith, Rex Anglia Malmsbury. est Monarcha in regno suo; and Malmsbury, Post conversionem ad sidem tot & tantas

tantas obtinuit Libertates quot imperator imperia.

Subsequence of Spain.

The King of Spain hath no Kingdom, but is feodary either to France or Castilia, enthralled by oath of subjection and vassallage, from King Henry, to Charles the fifth of France 1369. Ex sadere contracto: And for the Netherlands, there is homage due to the French King, or the Papacy, as Arragon to Innocentins the third, by King Peter 1204. confirmed by Ferdinand and Alphonsus 1445. and from James, by the like oath, 1453.

And to Sardinia and Corfica the King of Arragon, from the Bilhops of Rome, were under oath of subjection invested:

Ex formula fiducia.

The Kingdom of Portugal in vaffallage to the Pope under an Annual Tribute.

And the Canaries, Hesperides, and Gorgon Islands subjected to the See of Rome, under the chief Rent of sour hundred Florins, by Lewis King of Spain, 1043.

Of both the Indies Alexander did referve the regalities; of Sicilia, the Church is chief Lord.

And Granado and Navarre were made feodary to the Pope, under Julius the fecond.

Ex Eugubino.

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Naples at every change fendeth a Palfrey, as a Heriot, due to the Church of Rome, and of the Empire he holdeth the Dukedom of Millain.

So that it is questionable among Civilians: whether he be Princeps which hol-

deth in feodo all of others.

His absolute authority restrained in Arragon, by Justitia Arragonica. In Biscay and other places, by particular refervations. And his Jura Majestatis in Censin Nummorum, Bello judicando, Pace ineunda, &c. Limited by the priviledges of the State, as at Brabant and elsewhere in his Spanish Territories; Ex propriis constitutionibus & privilegiis.

Precedency of England in respect of more absolute authority Ecclesiastical.

I ER Majesties power more absolute II in this (confirmed by antient Custom and priviledg) than any other Christian Prince: For no Legat de La- Ex Ranulphe tere in England, de jure allowed, but the Nigro. Archbishop of Canterbury.

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If any admitted by curtefie, he hath no Authority to hold plea in the Realm, contrary to the Laws thereof: Placita 2 Hen: 4. and before he was admitted and entered the Realm, he was to take oath, to do nothing derogatory to the King

King and his Crown. Placita Anno primo Henr. 7. No man might denounce the Popes Excommunication, nor obey his Authority on pain to forfeit all his goods, without affent of the King or his Council. Placita 23. and 34 Edw. Ro. Dunelm.

Malmsbury.

Henry the first called a Provincial Council, so did Canutus and others.

No appeal to Rome without the Kiugs Licence: Anno 32 & 34 Edw. I. Inventure of Bishops and Churchmen, in the Kings hand. Ex Matt. Paris & He.

Huntington.

De gestis Pontisic, Donelm Placita. 32 Edw. 1. and in the 32 Edw. 3. When the reason of the Kings Ecclesiastical Authority, to suspend or bestow Church livings is yielded, Quia reges Anglu unguntur in Capite.

Subsequence of Spain.

The King of Spain can prescribe mocustom to prohibit the Popes Legat, not useth any Authority Penal over the Clergy; Spain can produce no Example of any Provincial Council by call of the King. For Bodin. lib. 1. cap. 6. towards the end writeth, that the Kings of Spain Non fine magna mercede impetraveral Sixti Pontificis Romani rescripto ne per grinis sacerdotia tribuerentur.

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Appeals from the King to Rome allowed. So the Kings of Spain have meerly no power Ecclefiastical, having dispoiled himself of all, by inthralling their Kingdom to the Church of Rome.

Precedency of England in respect of Eminency of Royal Dignity.

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THE Kings of England are anointed Ex libro Barna as the Kings of France, who only wellengs Carhave their preheminence before other nobia.

Kingdoms declared by miracle, in the care of the Regius morbus, which they can effect only; and that of antiquity: For Edward the Confessor healed many.

2. They are superiour Lords of the Kingdom of Scotland and Man, and Vicarii Imperii; as Edward the third and Oswald intituled Rew Christianissimus: Ve.Beda lib. 1.

3. They are named Filii adoptivi Ec-platina. elesia, as the Emperor Filius Primogenitus, and the King of France, Filius natuminor: vide Platin.

4. They are accounted among Reges consettus. Superillustres, in this order: Imperator, Rex Francia, Rex Anglia & Francia. Vide Consettus.

5. England in the General Councils at Sonstance and Pisa, was made a Nation, G 2 when

Ex lib. Sacrarum Ceremoniar.

when as all Christianity was divided into four Nations, Italicam, Gallicam, Germanicam, & Anglicam. Ex lib. facrarum

Ceremoniarum Ecclesia Romana.

6. Whereupon, seat accordingly was allowed at the three General Councils, viz. Constance, Pisa, Sienna, to the English Ambassadors next to the Emperour on the left hand, and to the King of France on the right hand: which were their Ancient seats before the Spaniards at Basil 1431. begun to contend for Precedency.

Where it was in the first Session or dered, that all Legats should hold such their places as they had enjoyed heretofore, according to their worth and artiquity: Yet in the Council of Treat the precedency of France with Spain

was made questionable.

Augustus de Cavelles, as the stronger reason to bar the French Interest, intered the Queen of England from her Aucestors, both in respect of Inheritance. Conquest and Gift, de jure Queen of France. By which reason when he dots shake or overthrow (as he thinketh) the Precedency of France, he doth consequently strengthen the Precedency of England.

And in Treaty between Henry the seventh, and Philip of Castile, 1506. the Commissioners of England did subsigned before the other. And in the Treaty

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Marriage with Queen Mary, Anno 1553. those of England are first rehearsed. And at Burbrough Anno 1588, they gave it to

her Majesties Ambassadors.

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And yet in respect of the Eminency of this Royal Throne, to the See of Canterbury was granted by Urbane, at the Council of Claremount, Anno 1096. for ever, the seat in General Council, at the Popes right foot, who at that time uttered these words; Includamus bunc in orbe nostro tanquam alterius orbis Pontificem Maximum.

Subsequence of Spain.

1. The Kings of Castile are never anointed, neither hath the Spanish Throne that vertue to endow the King therein invested, with the power to heal the Kings evil: For into France do yearly come multitudes of Spaniards to be healed thereof.

2. No Kingdom held in fee of him.

3. Spain then not remembred one of the Sons of the Church.

4. The King of Spain placed last after the King of England, inter Superillustres,

by the faid Corfettus.

5. The Kingdom was then comprised under Italica natio, and no Nation of itself, as in old it was called Iberia minor, as a member of Italy, Iberia major.

Virgilius.

G 3

England

Cosmographia.

Garfius.

England being Britannia major.

At which time the Spaniard contented himself with the place next to the King of France.

Precedency of England before Spain, in respect of the No-bility of Blood.

Her Majesty in Lineal descent is do duced from Christian Princes for 800 years, by Ethelbert a Christian 596, and the Matches of her progenitors most Royal with France, Germany, Spain.

Subsequence of Spain.

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For their Antiquity of descent a Vide Tarapha. Kings of Spain is chiefly from the East of Castilia about 500 years since.

For they cannot warrant their decent, from Atalaricus the Goth, and Dukes of Austria from the Earls of Hapsburgh only about 390 years since

Their matches anciently for the many part with their fubjects, and of later

their own blood.

Precedency of England, in no spect of antiquity of Government.

HEr Majesty having reigned not most happily 42 years.

This we would not have alledged, but that the Spanish Ambassador at Basil. objected in this respect the minority of

Henry the fixth.

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Her fex herein nothing prejudicial, when as both divine and humane Laws do allow it, and accordingly Spain, England, and Hungary, infomuch, that Mary Queen of the last, was always stiled, Rex Tilius. Maria Hungaria. Vide Tilius.

Subsequence of Spain.

The King of Spain yet in the Infancy of his Kingdom.

For the Precedency may be alledged, viz. The Antiquity of the Kingdom, when as Castile, Arragon, Navar and Portugal, Anno Christi

had their first Kings about 1025.

The ancient receiving of the Christian Faith, by Foseph of Arimathea, Simon Zelotes, Aristobulus, yea, by St. Peter and St. Paul, as Theodoretus, and Sophronius do testifie.

The Kingdom is held of God alone, acknowledging no superiour, and in no vassalage to the Emperour or Pope, as Naples, Sicilia, Arragon, Sardinia, and Corfica, &c.

Sir Thomas Moore denyeth that King John either did, or could make England subject to the Pope, and that the Tribute was not paid (pag.296.) but the Preter-

pence, were paid to the Pope by K. John,

by way of Alms.

The absolute power of the King of England, which in other Kingdoms is

much restrained.

1415

England is accompted the fourth part of Christendom; For in the Council of Constance, all Christianity was divided, in nationem, viz. Italicam, Germanicam, Gallicanam & Anglicanam, and accordingly gave voices.

England in the opinions of the Popes is preferred, because in it is contained in the Ecclesiastical division, two large Provinces, which had their several Legatinati when as France had scantly one.

Anno Christi.

The Emperour is accompted major filius Papæ, the King of France, filius minor, the King of England, filius adoptivus.

The Archbishops of Canterbury, are accompted by the people, tanquam alterius orbis Papæ, and anointed to have place in General Councils, at the Popes right foot.

The title of Defensor sidei, as honourably, and as justly bestowed upon the Kings of England, as Christianissimus upon the French; or Catholicus upon the

Spaniard.

1338.

Edward the third, King of England, was created by the Emperour, Vicarius Perpetuus Imperii; cum jure vita necisque in omnes Imperii subditos, and the Kings of England, Papa Vicarii, by Pope Nicola the

3065.

1246.

1185.

1191.

the fecond, vide COPGRAVE.

Innocentius the fourth, the Pope said, vere hortus deliciarum est Anglia, vere puteus inexhaustus ubi multa abundant, &c.

King Hen. 2. elected King of Jerusa-

lem by the Christians.

Richard the first, conquered the Kingdom of Cyprus, and gave it unto Guy Lusignan, whose posterity reigned there until of late years.

Kings of England are superiour Lords of the Kingdom of Scotland, and are absolute Kings of all the Kingdom of Ire-

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rpee in s of olar the England is not subject to Imperial and Roman Laws, as other Kingdoms are, but retaineth her ancient Laws, and Pura municipalia.

King Henry the fixth was Crowned

King of France at Paris.

The Kings of England did use the stile of a Soveraign, viz. Altitonantis Dei, Largislua Glementia, qui est Rex Regum & Dominus Dominorum,

Ego Edgarus Anglorum Baoixos Omniumque Regum Insularumque Oceani Britannici circumjacentium, cunctarumque Nationum quæ infra eam includuntur, Impera-

tor ac Dominus.

Opportion of Propolition

REMONSTRANCE

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TREATIES

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AMITY

AND

MARRIAGE

Before time, and of late, of the House

OF

AUSTRIA and SPAIN,

With the Kings of England, to advance themselves to the Monarchy of Europe.

Written by Sir ROBERT COTTON, Knight and Baronet.

LONDON:

Printed in the Year, 1679.

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REMONSTRANCE OF THE

TREATIES

AMITY

MARRIAGE

Before time, and of late of the House of AUSTRIA and Spain, &c.

Most Excellent Majesty,



E your Lords Spiritual and Temporal, and the Commons of your Realm Affembled in this your Parliament, having received

out of your meer grace, your Royal command, to declare unto your Highness our advice and Counsel, for the further continuing, or final breaking of the two Treaties between your Majesty, the Emperor, and the Spanish King, touching the rendition of the Palatinate, to the due and former obedience of your Illustrious Son the Prince Palatine; and that

Mary, Infant of Spain, and the most excellent Prince your Son, now Prince of Wales: We conceive it not unfit to offer up to your admired wisdom and consideration, these important Motives that induced our subsequent advice and resolution.

By contemplation whereof, we assume to our selves that your Majesty apparently seeing the infinite Calamity sallen of late unto the Christian world, by means of these disguised Treaties of Amity, and Marriage before time, frequently used with your progenitors, and now lately with your self by the House of Austria and Spain; to advance themselves to the Monarchy of Europe, will graciously be pleased to accept our humble advice.

1503.

Maximilian the Emperor, and Ferdinand of Spain, uniting by Marriage the possessions of the House of Austria, the Netherlands, Arragon, Castile, Sicilia, and their new discoveries, to one succeeding heir, began (though afar off) to see a way whereby their Grand-child Charles might become the Master of the Western world, and therefore each endeavoured by addition of Territories, to facilitate that their desired end.

France was the only obstacle, whose ambition and power then was no less than

than theirs; he lay in their way for Gelders, by fiding with Duke Charls; for Navarre, by protecting Albret their King; for their peeces in Italy, by confederation with the State of Venice; and for Naples and Millain by pretence of his own. They were too weak to work out their way by force, and therefore used that other of craft.

Lewis is offered for his Daughter Claude the Marriage of Charls their Grand-child, it is at Bloys accepted, and to them confirmed by Oath: the claim of France to Naples by this released, one hundred thousand Crowns yearly, by way of recognition only to France referved, who is besides to have the investiture of Milain for a sum of money, which the Cardinal D'amboyes, according to his Masters Covenant, saw discharged.

Ferdinand thus possessed of what he then desired, and Maximilian not meaning to strengthen France by addition of that Dutchy. or repayment of the money, broke off that Treaty to which they were mutually sworn, affiancing Charls their Heir to Mary the Daughter of Henry the 7th. to whose Son Arthur, Ferdinand had Married Katharine his youngest Daughter.

This double knot with England, made them more bold (as you see they did) to double with France: but the Prince

1506.

1510.

of Wales his untimely death, and his fathers that shortly followed, enforced them to feek out, as they did, another tye, the spirit and power of Lewis, and their provocations justly moving it; they make up a second Marriage for Katharine with Henry the eighth, Son of Henry the feventh; and are enforced to make a Bull dated a day after the Popes death to dispence with it; and consummate per verba de presenti, by Commisfioners at Calia, the former Nuptials of Charls and Mary, publishing a Book in print of the benefit that should accrew to the Christian world by that Alliance.

¥512.

Henry the Eighth left by his Father young and rich, is put on by Ferdinand to begin his right to France by the way of Guyen; and to fend his forces into Spain, as he did, under the Marquess Dorset, to joyn with his Father in Law for that defign, by reputation whereof Albret of Navarre was enforced to quit that State to Spain; who intended as it proved, no further use of the English Army, than to keep off the French King from affifting Albret, until he had polfessed himself of that part of Navarre, which his fucceffors ever fince retain. For, that work ended, the English Forces were returned home in Winter, having nothing advanced their Masters Service.

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The next year to affure Henry the eighth, grown diffident by the last carriage of Maximilian and Ferdinand, whose only meaning was to lie busying of the French King at home, to make an easie way abroad to their former ends, project to the English King an enterprise for France, to which they affured their affifiance, by mutual confederacy at Mecklin, for which Bernard de Mesa, and Lewis de Carror, for Castile and Arragon, and the Emperor in person gave oath, who undertook, as he did, to accompany Henry the eighth to Turmyn.

Ferdinand in the mean time dispatching the Vice-roy of Naples into Italy, to buse the French King and Venetian, that the English King with facility might

pursue the conquest of France.

Henry the Eighth had no sooner distressed the French King, but Ferdinand, respecting more his profit than his faith, closed with Lewis, who renounced the protection of Navarre and Gelders, so he and Maximilian would forsake the tye they had made with Henry the eighth.

The Vice-Roy of Naples is instantly recalled from Bressa; a truce with Spain and France concluded; Quintean sent to the Emperor to join in it; Don John de Manuel, and Diego de Castro imployed to work the Emperor, and Charles the Grandchild to exchange the marriage of

Mary,

15 146

Mary, Henry the eighths Sister, with Rene the second Daughter of the French King: and Lewis himself to take Elanor their Neece to Wife: and to clear all dispute about the conditions, a blanck is sent from Spain to the French King to over-write what he please.

Henry the eighth perceiving this close and foul play, entertaineth an overture made by the Duke de Longevil, then Prisoner in England, for a Marriage of Mary his Sister with the French King; which effected, the two subtile Princes

failed of their ends.

Lewis dead, and Francis succeeding, he made his first entrance a league with England, the recovery of Milain, which he did, the protection of his Neighbours, the reduction of the Swiffes from the Imperial side, for which he imployed to

them the Bastard of Savoy.

Maximilian and Ferdinand seeing by this all their new purchases in danger, and that they had now no disguised Marriage again to entertain the credulity of Henry the eighth, they work upon his youth and hononr. The Emperor will needs to him resign his Emperial Crown, as wearied with the weight of Government and distraction of Enrope, which needed a more active man than his old age to defend the Liberty of Subjects, and Majesty of Princes from the Tyranny of France.

That

1515.

That he had made the way already for him with the Electors; that he would fend the Cardinal Sedunensis, with ample Commission into England to conclude the resignation, which was done. That at Aquisgrane he will meet Henry the eighth, and there give up his first Crown; from thence accompany him to Rome, where he should receive the last right of the Imperial dignity, putting Verona into his protection, then assailed by the Venetians; and giving him the investiture of Millaine in feodo, more Imperiali, then in possession of the French, to tye his aid the faster against these States.

Hereupon Henry the eighth concluded a defensive league with the Bishop of Mesa and Count Daciana, authorised Commissioners from the Emperor, Arragon, Castile, and sendeth his Secretary Master, Pace with money, for Maximilian had already borrowed and broken to entertain the Swiffers into pay and con-

federacy against France.

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Charles the Grandchild must feign a difficulty to sway his League, until the Emperor, at Henry the eighth's cost, was setched from Germany to the Netberlands to work his Nephew to it, who in the interim had closely contracted a peace by the Grandsathers consent with France. No sooner had Maximilian received ten thousand Florins of the English King to bear his charge, but the

1516.

Treaty of Noyon, was closely between him; Arragon and Castile concluded; whereby the ten thousand Crowns for recognition of Naples was passed from France to the Emperor; and Charles himfelf affianced to Loyfia the French Kings Daughter, and also darkly carried, that when Master Pace at Agno came down from the Emperor with his Signature of the confederacy, the French Kings Ambaffador went up the back Stairs with fix thousand Florins, and the transaction of the Penfion of Naples to Maximilian, and there received his confirmation of the Treaty at Noyon; notwithstanding the same day the Emperor looking upon his George and Garter, wished to Wingfield, Henry the eighths Ambassador, that the thoughts of his heart were transparent to his Master.

So displeasing was this foul play to the Cardinal Sedunensis, the Emperors chief Counsellor, that he writ contra perfidiam Principum, against the falshood of his own Lord, a bitter Letter to the English King; who finding again how his youth and facility was overwrought by these two old and subtil Princes, his vast expences lost, his hopes of France lesned, and that of the Empire vanished (for Maximilian is now conferring the Title of Rex Romanorum on one of his Nophews) concludeth, by mediation of the Admiral of France, a peace with that King;

1518

King; a Marriage for the Dolphin Francis with the Lady Mary, and the re-delivery of Tournay, for a large Sum of money.

Not long after Maximilian dieth, leaving the Imperial Crown in Competition of France and Castile. Charls, whose defire was, as his Ancestors, to weave that wreath for ever into the Austrian Family, began to fear the power of his corrival, with whom the Pope then fided, and the English King stood affured by the late Marriage of their two Children. To draw off the Pope he knew it was impossible, he was all French. To work in Henry the eighth, he found the inconstancy of his predecessors, and the new match to lie in the way. To clear the one, he is fain in his Letters into England, to load his two Grandfathers with all the former afperfions, his years and duty, then tying him more to obedience than truth: but that he was a man, and himself now; that mutual danger would give affurance, where otherwife fingle faith might be mistrusted; France was in it self, by addition of Britany, more potent than ever, this man had rejoyned to it some important pieces in Italy, and should his greatness grow larger up by accession of the Imperial Crown, how easie were it to effect indeed what he had fashioned in Fancy, the Monarchy of Europe. As for the young Lady, who was like to lofe her

1519;

1519.

Husband, if Henry the eighth incline to this Counsel, and affist Castile in pursure of the Emperor; he was contented (for Loisia of France, espoused to him by the Treaty at Noyon, was now dead) to make up the loss of the Lady Mary by his own Marriage with her; a match fitter in years, for the Dolphin was an Infant, as great in dignity; for he was a King, and might by the affistance of her Father be greater in being Emperor.

greater in being Emperor.

Thus was Henry the eighth by fears and hopes turned about again, and Page forthwith fent to the Electors with instructions and money, who so wrought, that Charls was in July chosen Emperor: and that it was by the fole work of Henry the eighth, himself by Letters under his hand acknowledged. From Aquisgrane, he cometh Crowned the next year for England, Weddeth at Windfor the Lady Mary; concludeth by league the invation of France, and to divide it with Henry the eighth by the River of Rodon, making oath at the high Altardt Pauls for performance of both those Treaties.

1522.

Hereupon France is entred by the English Army, and Burbon wrought from his Allegiance by a disguised promise of this Emperor of Elianor his Sister for Wise, to raise forces against his Master, which he did, but was paid by the English King.

The

The French King to carry the Wars from his own doors, maketh towards Milan; whereby Burbon and his forces were drawn out of Province to guard

the Imperials in Italy.

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At Pavie they met, and the French King was taken Prisoner, and forthwith transported into Spain, where at Madrid the Emperor forced his confent to that Treaty, whereby he gained Burgundy, and many portions in the Netherlands; leaving Henry the eighth who had born the greatest charge of all that. Warre, not only there unfaved, but calling a Parliament at Toledo, taketh by affignment of his States, Habella of Portugal to Wife, procuring from Pope Clement a Bull to absolve him of his former Oaths and Marriage, working not long after by Ferdinandus his Chaplain, the Earl of Desmond to Rebel in Ireland, and Fames the fifth of Scotland, by promise of Marriage with his Neece, the Daughter of Denmark; to whom he likewise sent Munition and Money, to busie Henry the eighth at home, that he might be the less able to requite these indignities he had so done him. And to shew that his ambition was more than his piety, he ordered by instructions, first the Duke of Burbon, and after Hugo de Monfado to surprise Rome and the Pope; fending Angelo an observant Frier thither, whom he had affigued to H 4

1524.

1525.

1526

the Papal Throne, intending to reduce the choice of the See from the Cardinals again, to the Empire, and there to fet up

a first Monarchy.

But his design by a needful confederacy, as now of the Pope, French King, Princes of Italy and others, with Henry the eighth, who was made Caput fæderin, was to the safety of all Christian Princes, prevented happily, and he himself reforced at Cambray, in the year one thousand five hundred twenty and nine, to re-deliver the French King, and many pieces of that Crown he had wrested away by the Treaty of Madrid, and to sit down with moderate and sair conditions against his will.

His waking Ambition would not long let him rest, but again he plotteth to break the knot between the French

and English Kings.

To work this, he affureth, by contract, his affiftance in furtherance of Henry the eighths Title of France; and to make the greater belief, offereth a Marriage to the Lady Mary, so she might

be declared again Legitimate.

Henry the eighth accordeth with him, and advanceth his Army into France, where he had no sooner recovered Bullein, but the Emperor catching advantage on the French Kings necessities, falleth off from his former faith and promise, making up a peace perpetual with

France,

1529.

France, whereby all claim from the 14 Septemb. Crown of Arragon, Naples, Flanders, Arras, Gelders, and other parts was released, and mutual confederation for restitution of the Catholick Religion concluded betwixt them both.

Edward the fixth succeeding his Father forbears all Treaties with Spain, but those of intercourse, persisting as formerly in union with the Princes of Germany, and his other Allies, preventing those expences and dangers, which his Fathers belief and confidence of Spain had tasted of before.

His Sifter and Successor Mary, entertaining that fatal Amity with the Emperor and his Son, by Marriage, embarked her Estate in a dangerous War, whereby the Realm was much impoverished, and Callice loft.

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Her Sister of happy memory succeeding made up that breach, by that three fold Treaty at Cambray, 1558. Where King Philip, as bound in honour, flood bound for aid in Recovery of Calice; But his own ends by that Convocation served, he left her after to work out her safety her self alone; yet fearing that a Union of France and your Realms, in the person of your most vertuous Mother, then married into France, he under a feigned pretence of Marriage, wrought by Caraffa and his Facti1458.

on of other Cardinals, a stay of the Popes Declaration against the Queen of England, more his own fears, than his

love procuring it.

Yet the Princely disposition of this Noble Lady, taking those pretences for real favours, was not wanting both with her Counsel and Purse; for the imployed many of her ablest Ministers to mediate, and disbursed upon the assurance of Brabant, and the good Towns of Flanders whose bonds are yet extant, for reduction of those Provinces to his obedience, one hundred and fifty thousand pounds.

But when she found his aim to be the violating of their antient liberties, and in it saw her own danger involved; her Council advised her, not to leave the affistance of those people, France,

1578.

150000 li:

and those other Princes that lay as her self in danger, to be swallowed up in his ambitious ends, who when he intended

the Conquest of her Estate, to blind her with security, presented by Carolo Lanfranco, and the Prince of Parma, a Proposition of Peace; graced with as many Arguments of honest meaning, as his Pro-

genitors had used to her Father, which she accepted, but not without a prudent suspition. For when the Treaty was in height, he brought his invincible Navy to invade the Realm, the success whereof

was answerable to his Faith and Honor. She left not that injury without Re-

venge

1587.

venge, but forced him in his after Reign, to that extremity, that he was driven to break all faith with those 1597. Princes that trufted him; and paid for 25000 Mill. one years Interest, about twenty five of crowns. thousand Millions of Crowns.

So low and desperate in Fortunes King James. your Highness found him, when to all our comforts you took this Crown; Then from the abundant goodness of your peaceable Nature, you were pleafed to begin your happy Raign with general quiet, and with Spain the first, which should have wrought in noble Naturas a more grateful Recompence than after followed: For long it was not before Tyrone was heartned to rebel against your Highness, and flying, had pension at Rome, paid him from the Spanish Agent. His Son Odonel Tirconel, and others your chiefest Rebels, retained ever fince in Grace and Pay with the Arch-dutchess, at Spains devotion.

As foon as your eldest Son of holy memory now with God, was fit for marriage, they began these old disguifes, by which, before they had thriven

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of smits and Marriage, Sec. TOT eer as her forced time in his The en good at authorized the section break of brinch with that 155. and point and paid for its o were to said mount model houset a second . A Cidlion of Chrowns. and definite in Programs is from the adding when early 1823; out us ones you dold this Organis to it also graphs at his me - Pedivole House in the way of the ાત ના માં માંગુ જ અને કે sand a destroy that l co bulhasa a sal Service of the book of the best of the entro da albara (Albaria, en cuardo entra e de grazo porte que como de

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Twenty-Four

ARGUMENTS;

Whether it be more expedient to suppress

POPISH PRACTICES

Against the due

ALLEGEANCE

OF HIS

MAJESTY.

By the Strict Executions, touching Jesuites and Seminary Priests.

OR,

To restrain them to Close Prisons, during life, if no Reformation follow.

Written by Sir Robert Cotten, Knight and Baronet.

LONDON, Printed in the Year, 1679. T. et y-Four

POPISH PRACTICES

Against the do

ALLEGEANCE

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Writesa by Sr Rolaws on a, Knight

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Twenty four

ARGUMENTS

Whether it be more expedient to suppress

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TO HIS

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By the Strict Execution touching Jesuits, and Seminary Priests, &c.



Am not ignorant, that this latter Age hath brought forth a swarm of busic heads, which measure the great Mysteries of State,

by the rule of their felf-conceited wifdoms; but if they would confider, that the Commonwealth, governed by grave Counsellors, is like unto a Ship directed by a skilful Pilot, whom the necessities of occasions, and grounds of reason, why he steereth to this, or that point of the Compass, are better known, than to those that stand aloof off; they would perhaps be more sparing, if not more wary in their resolutions. For my own particular I must confess, that I am naturally too much inclined to his opinion, who once said, Qui bene latuit, bene vixit, and freshly calling to mind the saying of Functius to his Friend, at the hour of his untimely death, Disce mea exemplo mandato munere fungi: Et suge seu pestem—

I could easily forbear to make my hand-writing the Record of my opinion, which nevertheless I protest to maintain rather deliberatively, than by the way of a conclusive affertion; therefore without wasting precious time any longer with needless Prologues, I will briefly set down the question in the

terms following, viz.

Whether it be more expedient to suppress Popish Practices, against the due Allegiance to his Majesty, by the strict Execution touching Fesuites and Seminary Priests: Or to restrain them to close Prisons, during life, if no Resormation follow. が前田田

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In favour of the first Division.

Here are not few, who grounding Mercy forerunthemselves on an antient Proverb, of a malefactor, A dead man bites not, affirm, that fuch are is an ill Guardangerous to be preserved alive, who dian of a Prinbeing guilty, condemned, and full of ces Person. fear, are likely for purchase of Life and Liberty, to inlarge their uttermost in desperate adventures, against their King and Country:

No less is it to be feared, that while A hard hand, the fword of Justice is remiss, in cutting suddenty remitof heinous offendors against the Dig- the rude people nity of the Crown, the mif-led Papal interpreted in multitude, in the interim, may enter in- the best sense, to a jealous suspence, Whether that forbearance proceed from fear of exasperating their desperate humours, or that it is now become questionable, Whether the execution of their Priests, be simply for matter of State, or pretended quarrel for Religion.

And whereas in a remediless incon- There is no hope venience, it is lawful to use the extremi- of Reformation ty of Laws against some few, that many where there is by the terror of the example, may be re- no Confession of formed; what hope can there be that the fault. Clemency may tame their hearts, who

interpret

interpret His Majesties Grace in transporting their Priests out of His Realm. to be a meer thift to rid the Prisons of those whom Conscience could not condemn of any capital crime.

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IV.

while Fustice Reeps, the time ferves to fow news, and raise Factions.

Neither are their vaunting whisperings to be neglected, by which they feek to confirm the fearful fouls of their party, and to inveigle the ignorant, doubtful or discontented Persons: for if the glorious extelling of their powerful friends, and the expectance of a golden day, be suffered to win credit with the meaner fort, the relapse cannot be small, or the means easie to reform the error, without a general combustion of the

V.

Fearful Spirits, by Sufferance. grow insolent and cruel.

Let experience speak somewhat in this behalf, which hath evidently descryed, with the Current of few years, that the forbearance of severity, hath multiplied their Roll in fuch manner, thatit remains as a Corrolive to thousands of his Majesties well-affected Subjects.

VI.

union in a preprevails more than number.

To what purpose serves it to music pared conspiracy the names of the Protestants, or to vaunt them to be ten for one of the Roman Fa ction? as if bare figures of numeration could prevail against an united parts refolved, and advised before hand, how to turn their faces with affurance, unto

all dangers, while in the mean time, the Protestants nestling in vain security, fuffer the weed to grow up that threatneth their bane and merciless ruin.

VII

Some time the Oath of Supremacy It is hard to choaked their presumptuous imaginati- persuade those ons; and yet could not that infernal of their depensmoke be smothered, nor the Locusts if dency on the fuing thereout be wholly cleanfed from Pope, are scarce the face of this Land. Now that the masters of their temporal power of the King, contained own Souls. in the Oath of Allegiance, is by the Papal See, and many of the Adorers thereof, impudently avowed to be unlawful; hall the broachers of fuch Doctrins be fuffered to live, yea and to live and be relieved of us, for whose destruction they groan daily?

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To be a right Popish Priest, in true Malis beneface-English sense, is to bear the Character of re tantundem adisloyal Renegado of his natural obedi- est ac bonis maence to his Soveraign, whom if by connivency he shall let flip, or chastise with alight hand, what immunity may not traiterous Delinquents in lesser degrees expect, or challenge, after a fort, in eguity and justice?

1 X.

If there were no Receivers, there grief, and by the would be no Thieves: Likewise if there clamor of a were no harbourers of the Jesuits, it is multitude, Juto be prefumed, that they would not times condemtrouble ned.

Fellow hip in misery easetb

therefore rigor must be extended against the Receiver, that the Jesuits may be kept out of doors; were it then indifferent justice, to hang up the Accessary, and let the Principal go free, namely to suffer the Priest to draw his breath at length, whiles the Entertainer of him under his Roof submits his body to the Executioners hands? without doubt if it be fit to forbear the chief, it will be necessary to receive the second offender into protection, wherewith a mischief must ensue of continual expense, and scandalous restraint of so great a number.

Reputation is one of the principal Arteries of the Common-wealth, which Maxim is fo well known to the Secretaries of the Papacy, that by private Forgeries, and publick impressions of Calumniations, they endeavour to wound us in that vital part; howfoever therefore fome few of that stamp, being better tempered than their fellows in defence of this present Government, have not foared to affirm that Tyranny is unjustly ascribed thereunto, for so much as freedom of Conscience after a fort may be redeemed for money, notwithstanding there want not many Pamphleters of their fide, who opprobrioufly cast in our teeths, the converting of the penalty inflicted on Recufants, and refusers of the

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Oath

It is not good to fet price on that which being fold will bring repentance to the feller. Oath of Allegiance, from the Kings Exchequer, to a particular Purse, sure we cannot prefume, that those Libellers may be disfuaded from spitting out their ve- Wariness is to nom maliciously against us, when they be used with shall see their Priests mewed up without those, Qui nec further process of Law, for either they tem pati pofwill attribute this calm dealing to the funt, nec totam justice of their cause, the strength of their Libertatem. party, or patience; or that tract of time hath discovered our Laws, importing overmuch sharpness in good policy to be thought fitter for abrogation, by Non-usance, than repealed by a publick decree.

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Moreover it is fore-thought, by some, Most men write that if these Seminaries be only restrain- good Turns in ed, they may prove hereafter like a Snake bad in Marble. kept in the bosom, such as Bonner, Gardiner, and others of the same Livery hewed themselves to be, after Liberty obtained in Queen Maries time, and if the loss of those Ghostly Fathers aggrieve them, it is probable, that they will take Arms Sooner, and with more courage, to free the living, than to fet up a Trophy to the dead.

XII.

Howfoever, the Jesuits band is known Fugitives that in their native foyl, to be defective in crave success many respects, which makes them un- in favour of derlings to the Protestants, as in Autho- their cause and rity, Arms, and the protection of the power.

Relation de Botero. a Faction dares number their fide, that there is an opinion conceived of Sufficient Arength, to attempt some Innovation. In a Commonwealth there ought to be one bead, for which caufe a Prince must be vigilant, when divers Factions arise, that by favouring one, and neglecting the other, instead of a head only a member of one Party.

Laws, which is all in all; Nevertheles they infinuate themselves to foreign Princes, favouring their party, with promifes of ftrong affiftance at home, if they may be well backed from abroad; It is a fign when To which purpose they have divided the inhabitants of this Realm into four Sects, whereof ranking their troops in the first place (as due to the pretended Catholicks) they affurned a full fourth part to their property, and of that part again they made a subdivision into two portions, namely, of those that openly renounced the established Church of England, and others, whose certain number could not be affigned, because they frequented our service, our Sacraments, referving their hearts to the Lord God the Pope: The fecond party they allot to the Protestants, who retain yet (as they fay) some reliques of the Church: The third rank and largest was left unto the Puritans, whom they hate deadly, in respect of all he become they will hold no indifferent quarter with Papistry: The fourth and last maniple they affign to the Politicians but moni (fay they) fenza dio, & fenza anima, men without fear of God, or regard of their Souls, who bufying themselves only in matter of State, retain no sense of Reminds in begin- ligion. Without doubt, if the Authors of this partition have cast their account aright, we must confess that the latter brood is to be ascribed properly unto them;

Discontented ning of Tumults will agree, though their ends be divers.

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them; for if the undermining of the A multitude is Parliament-House, the scandalizing of never united in gross, but in the King in print, who is Gods anoin-Some few needs ted, and the refusal of natural obedience, which being tabe marks of those, that neither stand in ken away, conawe of God or conscience, well may the verteth their Papists boast, that they are assured of the fury against movers first number, and may presume likewise of the Sedition. of the last friendship, when occasion shall be offered; for the preventing of which combination, it is a fure way to cut off certain Gerthe heads that should tie the knot, or at mans in Henry least to brand them with a mark in the the seconds time forehead before they be dismissed, or selves Publi-(after the opinion of others) to make cans; were them unwelcom to the feminine fex, marked with a which now with great fervency imbraceth them.

calling thembot Iron in the forebeads and whipped, being thrust out in

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the Winter, with a Prohibition that none should receive them into their houses; they died of hunger and cold.

These are for the most part Arguments vented in ordinary Discourse, by many who suppose a Priests breath to be contagious in our English Air.

Others there are, who maintain the second part of the Question with reasons not unworthy of obser-

sion becomes the comment and

vance.

world of Schmanlike or

In favour of the second Division.

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Rooted suspition, being violently bandled, groweth more wary, but not less obstinate.

Eath is the end of temporal woes but it may in no wife be accounted the Grave of memory; therefore howsoever it is in the power of Justice to suppress the Person of a man, the opinion for which he suffered (conceived truly, or untruly in the hearts of a multitude) is not subject to the edg of any fword, how tharp or keen foever. I confess that the teeth are soon blunted that bite only out of the malice of a fingular Faction, but where Poyson is diffused through the Veins of a Common-wealth, with intermixture of blood good and bad; separation is to be made rather by patient evacuation, than by present incision; the greatest biter of a State is Envy, joyned with the thirst of Revenge, which seldom declares it self in plain colours, until a jealousie conceived of personal dangers, breaketh out into desperate resolutions; hence comes it to pass, that when one male-contented member is grieved, the rest of the body

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feonspirators have one sympathy of mind, the conspiracy is never wholly suppressed, so me of memaintib. is sensible thereof, neither can a Priest or Tesuite be cut off, without a general murmur of their Seminaries, which being confident in their number. fecretly Arm for opposition, or confirmed with their Martyrs Blood (as they are perswaded) resolve by patience and sufferance to glorifie their cause, and merit Heaven. Do we not daily see, that it is easier to confront a private enemy, than a Society or Corporation; and that the hatred of a Opinion fetled State is more immortal than the Spleen is like Hydraes of a Monarchy, therefore except it be heads, which demonstrated, that the whole Roman must be cured City, which confifts not of one brood, with scarring may be cut off at the first stroke as and not by letone entire head, I fee no cause to think our State secured, by fitting on the skirts of some few Seminaries, leaving in the mean time a multitude of Snarlers abroad, who already shew their Teeth, and only wait opportunity to bite fiercely. I will not deny, that, what we fear, we commonly hate, provided always, that no merit hath interceded a reconciliation; for there is great difference between hatred conceived against him that will take away clemency is a the life, and him that may justly do it, Divine instinct, and yet in clemency forbears to put it in fupernal effetts. effect; for the latter breedeth reverend awe, whereas the former subjecteth to fervile fear, always accompanied with defire

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in a multitude,

Gorticii Axiomata Politica.

desire of innovations, and although it hath been affirmed of the Church of Rome, Quod Pontisicium genus semper crudele, nevertheless out of Charity let us hope, that all Devils are not so black as they are painted, some, or perhaps many of them there are, whom conscience, or in default thereof, pure shame of the world will constrain to confess that his Majesty most graciously distinguisheth the Theory of Popery; from the Active part thereof, as being naturally inclined, Parvis peccatis veniam, magnis severitatem commodare, nec pana semper, sed sapius panitentia contentus esse.

Tacitus in vita Agricol.

II.

Mistaking of punishments Legally inflicted, commonly proceeds from fond pitty, or the interest which we have in the same cause; both which beget blind partiality; admit then, that the Papal affecting merit by compassion, may be neerly touched with the restraint of their Seminaries, it cannot be denyed, I hope, except they had the hearts of Tygers, that in humanity they will prefer their ease of durance, before the rigor of death; and albeit that Parsons, Bellarmin, and the Pope himself, constrain their spiritual Children, to thrust their fingers into the fire, by refusing the Oath of Allegiance, notwithstanding we have many testimonies in judicial Courts, and printed Books, that

when T aiters in evils will not choose the least, it is an argument that they are desperate, and breath nothing but extremity of mischief.

that the greater part of them are of that Theban hunters mind, who would rather have seen his Dogs cruel acts, then have felt them to his own coft.

Garnet himself also in one of his se- It was a precept cret Letters, Lamented; that after his of Machivels, to death he should not be inrolled amongst put on the mask the Martyrs, because that no matter of Religion. Religion was objected against him; yet it plainly appeared in his demeanour, that he would gladly have furvived the possibility of that glory, if any such hopes had remained. Neither is it to be prefumed, that being in Prison, he would ever have conceived that we durst not touch his Reverence, or that Parsons to cathe Law was remiss which had justly vil, of whom it condemned him, and left his life to the might be truly Kings mercy: It was the distance of spoken, Malus place, and not Parsons that interpreted malum pejothe sending over seas of the Priests to & sui similem. be a greater argument of their innocency, than of his Majesties forbearance; For had Father Parsons himself Gross and brubeen Coram nobis, his Song would rather fooner reformed, have been of mercy than justice. It than meaner is truly faid, that we are all instructed escapes, for so better by examples than precepts, there- much as the one fore if the Laws Printed, and In- cannot be dedictments recorded, cannot controll impudency, the Calumniations of those that wil- whereas the ofully will mistake Treason for Reli-ther admits gion: By the execution of two or some colour for three of that back-biting number, I doubt

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excuse and pity.

doubt not but the question may readily be decided.

----Namque immedicabile vulnus, Ense tecidendum est, Ne pars sincera trabatur.

III.

To bestow benefits on the bad, maketh them worse, and vilifieth the reward of the vertuoss.

To dally with pragmatical Papifts, especially with those that by their example and Counsel pervert his Majesties Subjects, I hold it a point of meer injustice; For, what comfort may the good expect, when the bad are by connivency free to speak, and imboldened to put their disloyal thoughts into execution? For explaining therefore of my meaning, it is necessary to have a regard unto the nature of the Kings Liege-People, that are to be reformed by example of justice, and others, Forraigners, who will we, nill we, must be censurers of our actions: It hath been truly observed that the Nations of Europe, which are most remote from Rome, are more fuperstitiously inclined to the dreggs of that place, than the nearer Neighbours of Italy, whether that humour proceeds from the Complexion of the Northern Bodies, which is naturally more retentive of old Customs, than hotter Regions; or that the vices of the City, scated on seven Hills, are

by crafty Ministers of that See, concealed from the vulgar fort, I list not now to discuss; but most certain it is. that the people of this Isle exceed the Romans in zeal of their profession; in so much, that in Rome it felf, I have heard the English Fugitives taxed by the name of Pichia pelli Inglesi, Knock-brefts, id oft, Hypocrites; now as our Countrey-men take furer holdfast of Papal traditions, than others; fo are they naturally better fortified with a Courage to endure Death for the maintenance of that cause; for this Climate is of that temperature out of which Vegetius holdeth it fittest to chuse a valiant Souldier, where the Heart finding it self provided with Valour is often plenty of blood to sustain sudden de- weakness, but fects, is not so soon apprehensive of being too much death or dangers, as where the store- prized, it turnhouse of blood being small, every ha- eth to unbridled zard maketh pale cheeks and trembling fury. hands: Angli (fay Ancient writers) bello intrepidi, nec mortis sensu deterrentur: And thereunto Botero the Italian beareth witness in his Relations: Many Strangers therefore coming out of Forraign parts among the rarities of England, defire to see whether Report hath not been too lavish, in affirming that our condemned Persons yield their Bodies to Death with chearfulness, were

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The best Laws are made out of those good Cu-· ftoms, whereunnaturally inclined.

use to see men die with resolution, taketh adeath, for which mans used the fights of their Gladiators.

were it not that by daily experience we can call our felves to witness of that truth, I could produce to the people is the Reverend Judge Fortescue, who in commendation of our English Laws. made suitable (as he well observeth) to the inbred Conditions of the inhabitants of this foil, avoweth, that the English people in tryal for Criminal causes, are not compelled by tortures to confess as in other Nations it is uway the fear of fed, for as much as the quality of the English is known to be less fearful of purpose the Ro- death than of torments: for which cause, if the torments of the Civil Law were offered to an innocent person in England, he would rather yield himfelf guile, and fuffer death, than endure the horror of lingring pans Insulani plerunque Fures (faith one) and fo true it is, that this Countrey is stained with that imputation, notwithstanding that many are put to death, to the end that others by their fall, might learn in time to beware: If then it do appear that terrour prevails cans when they not, to keep men from offences which are condemned by Law and Conscience, what affurance can there be to scare those who are constantly satisfied in

The Hereticks called Publimere whipped they took their puni fiment gladly, their

Captain Gerrard going before them and finging, Bleffed are you when mes do hate you. Andromachen, Si vis vitam minitare Sen. I rag. their minds, that their fufferings are either expresly, or by implication for matter of Religion and health of their Souls; in such case to threaten death to English-men, Quibus nibil interest humi ne sublimi ne putrescant, is a matter of small consequence, Purpuratis Gallis, Italis, aut Hispanis, ista minitare, to a settled resolution it boots not to thew the dreadful vifor of death; Menaces to prolong a wearisome life, prevail much more in fuch cases. Rightly did Clement the eighth consi- worldly defires der, that by burning two English-men may be quenchin Rome for supposed Herefie, he ra- ed with godly ther impaired his Cause than better'd meditations, it; infomuch, that many present at our Heavenly the resolute death of Mr. Marsh, who abated by earthwas brought to dust in Campo di Sancta ly punishments. Fiore, spared not to proclaim himself a Martyr, carried away of his aihes for a Helique, and wished their souls in the same place with his; which news brought to the Popes ear, caused him (as it was bruited about Rome) folemnly to protest that none of the English Nation should publiquely from that time be confumed with fire. On the other fide if we read the Volumes written in praise of their Priests Constancy, the Martyrology or Calendar of Martyrs, and path way of Salvation as it were, chalked out unto the Papifts, by facritizing

hopes cannot be

wisdom to maintain the truch with as little disputation as may be, left a good cause be marred with ill bandling.

Truth feldom prevaileth with the partiality of the people. which being ignorant, is carried away with the outward Semblance of things.

It is hard to make a rule so general; against which difference of Circumftance may not except.

It is a point of crifizing their lives for the Pope, we shall find that by taking away of one, we have confirmed and united many, whereof I could give particular instance, if I thought any scruple were made in that point. As for forraign parts which hold with the Papal Supremacy, it is clear that they will be fevere and partial judges in this cause; for albeit that here in England, it is well known to all true and loyal Subjects, that for matter of Roman doctrine, no mans life is directly called into question? but that their disobedience in reason of State is the motive of their persecution; Nevertheless where a great Canker of Christendom is rooted in a contrary opinion, and things in this world are for the most part esteemed by outward appearance, this Land cannot escape malicious scandals, neither shall there be want of Colledges to Supply their Faction with Seminaries: Therefore again and again, I fay, that if the state of the question were so set, that it were possible by a general execution of the Priefts, and their adherents, to end the controversie, I could in some fort with better will, subscribe thereunto: But feeing I find little hope in that courfe, I hold it fafer to be ambitious of the Victory, which is purchased with less loss of blood; and to proceed as Tully teacheth

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teacheth his Orator, who when he cannot wholly overthrow his Adversary, yet ought he to do it in some part, and withal endeavour to confirm his own party in the best manner that may be.

IV.

He that forbeareth to fow his ground in expectance of a good Wind or favourable Moon, commonly hath a poor crop and purse; so shall it fare with this State; if private whisperings of discontented persons, that never learnt to speak well, be too nicely regarded, yet He that is caought they not to be fleightly fet at many, is in nought, lest our credit grow light, even danger, first to in the balance of our dearest friends. De suspected by The Papistical Libellers inform against his friends, and us, as if we were desirous to grow fat condemned if with sucking of their blood, the very the flander conwalls of their Seminary Colledg at tinue. Rome are bedawbed with their lying Phansies, and in every corner the Corner-creepers leave some badg of their malicious spleen against us, crying out of Cruelty and Persecution; but if the penalty of death be changed into a fimple endurance of prison, what moat in our eyes can they find to pull out? or with what Rhetorick can they defend That counsel their obstinate malapertness, which with that is fitted to repaying us ill for good, deferve to the nature of have coals of indignation poured upon times and pertheir heads? Visne muliebre Confilium? sons.

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Those Changes of States are safely made, which reserving most of the Ancient form, betters it and reduces the defects into order.

said Livia to Augustus; Let severity fleep a while, and try what alteration the pardoning of Cinna may procure; The Emperor hearkened to her Counfel, and thereby found his Enemies mouths stopped, and the fury of their malice abated. Some there are perchance that will term this Clemency Innovation, and vouch the Precedent of that City, which permitteth none to propound new Laws, that had not a cord about their necks ready for vengeance, if it were found unprofitable; but let fuch Stoicks know, that there is great difference between the penning of a Law, and advice giving for the manner of executing it; neither (by their leaves) are all innovations to be rejected, for divine Plato teacheth us, that in all Common-wealths upon just grounds, there ought to be some changes, and that States-men therein must behave themselves like skilful muficians, Qui artem musices non mutant, sed musices modum.

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That an evil weed groweth fast, by the example of the new Catholick increase, is clearly convinced; but he that will ascribe this Generation simply to his Majesties heroical vertue of Clemency, argueth out of fallacy, which is called Ignoratio Elenchi; was not the zeal of many cooled towards the last end of Oueen

The Church is most gealous, when Persecution is fresh in memory; when those times are forgotten, we grow to loath that which we enjoy freely.

Queen Elizabeths Reign? hath not the impertinent heat of some of our own fide bereft us of part of our strength, and the Papacy with tract of time gotten a hard skin on their Consciences?

Parva metus primo, mox fefe attollit in altum?

But if we will with a better infight behold how this great quantity of spaun is multiplied, we must especially ascribe the cause thereof to their Priests, who by their deaths prepare and affure more to their fect, than by their lives they could ever perswade; it were incivility to distrust a Friend, or one that hath the shew of an honest man, if he will frankly give his word, or confirm it with an Oath, but when a Proteflation is made upon the last gasp of life, it is of great effect to those that cannot gainfay it upon their own knowledg.

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The number of Priests which now adays come to make a Tragical con- In this case the clusion is not great; yet as with one question is not Seal many Patents are sealed; so, with for much of the the loss of few lives, numbers of waveting spirits may be gained, Sanguis Judg, and Martyrum, Semen Ecclesia: And though what Censure those Priests having a disadvantagious cause, are in very deed but counterfeit shadows of Martyrs unto a true understanding, yet will they be repu-

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truth of it, as robo (hall be will be given.

ted for such, by those that lay their Souls in pawn unto their Doctrine, with whom if we lift to contend by multitude of voices, we shall be cried down without all peradventure, for the gate of their Church is wide, and many there are that enter thereinto.

VI.

By divers means it is possible to come to one and the felf same end; seeing then that the fum of our well-wishing is all one, namely that Popish Priests may have no power to do harm, it is not impertinent to try fundry paths, which may lead us to the perfecting of our defires. Politicians distinguish inter rempublicam constitutam & rempublicam constituendam, according to the several natures whereof Statists are to dispose of their Counsels and Ordinances; were now the Rhemists and Romulists new hatched out of the shell, the former course of severity might foon bury their opinions with their persons, but fince the disease is inveterate, worst they are variety of medicines is judicially to be applied. The Romans did not punish all crimes of one and the felf-fame nature with extremity of death; for some they condemned to perpetual Prison; and others they banished into an Island or some remote Countrey; 6ven in the case of Religion they were very tender to dip their fingers in bloodi

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In the first t 1 years of Queen Eliz. it was easier to subdue Popery than now, for then they feared to. irritate the State, notknowing how far Severity might extend, now knowing the resolved Agere & pati fortia.

blood; for when Cato was Conful, (and it seemed good unto the Senate to suppress with violence the disordered Ceremony of the Bacchanals, brought by a strange Priest into the City) he withstood that sentence, alledging that there was nothing so apt to deceive men as Religion, which always pretends a flew of divinity: and for that cause, it behoved to be very wary in chastifing the profesfors thereof, lest any indignation should enter into the peoples minds, that somewhat was dero- Vulgus est mogated from the Majesty of God. O- rosum animal, thers (more freely) have not spared quod facilius to place Religion, (I mean that Reli- duci, quam gion which is ignorantly zealous) amongst the kinds of Frenzie, which is not to be cured otherwise than by time given to divert, or qualifie the fury of the conceit,

Tantum Religio potuit suadere malorum.

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Howsoever in valuing the power of a Many Parti-City or strength of Arguments, quali- 3ans encourage ty and worth is to be preferred before ted, and when number; nevertheless where the utter- an enemy cannot most of our force is not known, it prevail against imports much to have it conceived; numbers, his That the multitude stands for us, for how to offend, doubts and suspicions cast in an ene- but how to make mies way evermore makes things feem a safe retreat. greater, and more difficult than they are indeed; we have by Gods mer-K 3

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More Priefts may be (but up in a year than they can make in many.

Defire of innovation is rash and therefore can bardivagree of a head.

Peace is always to be wished provided that under the canker thereof, there be not a mifchief, entertained worse than War it felt.

cy the Sword of justice drawn in our behalf, which upon short warning is able to disunite the secret underminers of our quiet; we have a King zealous for the house of the Lord, who needeth not to fear less success in shutting up of Priests, than our late Queen had, in restraining them in Wishich, Castle, where lest their Factious Spirits should grow rusty, they converted their Cancer to fret upon themselves, and vomitting out Gall in Quod-libets, shewed that their disease was chiefly predominant in the spleen; what tempests they have raised in their Colledg at Rome, their own books, and many travellers can witness; the andcontentious, storm whereof was such, that Sixtus Quintus complained seriously of the vexation which he received oftner from the English Scholars, than all the Vasfals of the Triple Crown; and untruly is the Magistrate noted of negligence or overmuch security, that layeth wait to catch the Foxes, and the little Foxes which spoil the Vineyard, though afterwards without further punishment he reserve them to the day wherein God will take account of their Stewardship; for if Aristotles City, defined to be a Society of men affembled to live well, be the same which in our Law hath reference to the maintaining of the people in Peace, fo long as we taste of the **Sweet** fweet of a peaceable Government we cannot say but that we live well, and that the City confisting of men and not of walls is happily guided.

VIII.

An Oath is a weak bond to contain An oath is of him that will for pretended conscience force, so long fake hold no faith with Hereticks, or by lawful, when absolution from a Priest thinketh him-that opinion is self at liberty to fly from any promise crazed, it doth or protestation whatsoever; therefore more burt than when I remember that Wat son the Priest, good. notwithstanding his invectives against the Jesuits, gained liberty to forge his traiterous inventions, and had others of his Society in the complot, I judg it safer to make recluses of them, than to fuffer fuch to dally with us by books, and some idle intelligences cast abroad only as a mist to blear our eyes. But how shall we find the means to apprehend those disguised Romanists that borrow the shape of Captains, Merchants, Gentlemen, Citizens, and all forts of people, and by equivocation may deny themselves to be themfelves? In answer to this question, I will first shew the reason why they are not pursued and taken, and hereafter make an overture how they may be bolted out of their hutches; the nature of Man howfoever in hot blood, it be thirfly of revenge, in a cold temper it hath a kind of Nausea as I may call it, or a diftafte

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One man in another beholdeth the Image of himself, and compassionate and sensible of that which may fall to himfelf.

staste of taking away the lives, even of the Nocent, infomuch that in all Affifes and Seffions, an offender can hardly be thereby groweth condemned, whom the foolish pitty of man will not after a fort excuse, with laying some imputation on the Judg, part on the Jury, and much on the Accufer; and fuch is their blind, affection, that the prisoner who perhaps was never recommended for handsomness, will be effeemed of them, for one of the properest men in the company; from hence it comes that the name of Serjeant, or Pursevant is odious, and the executioner, although he be the hand of justice, is esteemed no better than an enemy of mankind, and one that loft honesty and humanity in his Cradle; Reverend Master Fox was wont to say, that spies and accusers were necessary members in a Common-wealth, and deserved to be cherished, but for his own part he would not be any of that number, or wish his friends to affect fuch imployments; and albeit that the Law permits, and commands every man to apprehend a Felon, do we not fee commonly very many content to stand by and look on while others perform that office? Likewise it is evident, that if such as are tender of their reputations, be very scrupulous personally to arrest men for civil actions of debt, they will be more unwilling instruments of draw-

What men do unwillingly is never done effeltually.

drawing their bodies to the Rack or the Gallows, especially when there is any colour of Religion to be pretended in their-defence; the divertity of mens faces is great, but the difference of their minds in this case is more variable, wherein the meanest have thought as free as the highest; besides this, there are too many of the blind commonalty altogether Popilh, though indeed they make honourable amends for their treafon; verily I know not what mifguiding of the mind it is, that maketh men when many forecast the possibility of alteration in tumultuous permatters of Religion, and for that respect sons as ault, they are exceeding backward in disco- there will be a very, and laying hands on Seminaries, yea, and are timorous in enacting sharp Laws against them, as those that filently fay amongst themselves,

Sors hodierna mihi, cras erit illa tibi.

Some also survive; who, remember that in Queen Maries time, the Protefants alledged a Text, that the tares should not be plucked up before harvest, nay, I shall speak a buggs word, there is no small number that stand doubtful whether it be a grateful work to cross Popery, or that it may be done fafely without a foul aspersion of Puritanism, or a shrewd turn of their labours, at fome time or other, by which unhappy ambiguity it comes to pass, that these Animalia Amphibia (the Priests I mean)

Vertue neither praised nor rewarded waxeth cold.

that prey on the Souls and bodies of either fex, unattached, revel where they lift, though they be more feen than a man dancing in a Net; how much fitter were it for us couragiously to invite them to our party, by preaching or confuting them by writing, and unto the State wherein we stand, wisely to apply the faying of the Affyrian King to his Souldiers, You are fools (quoth he) if there be any hope in your hearts to redress forrow by flight, or rather indeavour to make them fly that are the causers of your grief, affuring your selves, that more perish in flight, than in the Battel, even as many feeking to meet the Papists half way discomfort our own party.

IX.

An ill name given to a good geth men from medling with it.

It followeth now (according to the Method prescribed) that an overture thing discoura- be made to get the Jesuits and their shadows the Priests, into possession; it hath been heretofore recited, that the unwelcom names of a blood-fucker, a busie-body, or a Puritan, have been shrewd Scar-crows unto many honest minds; by abrogating therefore of those or fuch like Imputations many will be ffirred up to undertake the apprehending of the adversaries unto the truth, especially when for their pains and time imployed, they shall deserve and have the title of good Patriots, dutiful SubSubjects, and zealous Christians, how Wife men do ready is every common person to carry forecast how to a Malefactor to the Stocks, rather than do most with unto the Gaol or Execution? doubtless they will be no less forward to attach a Priest, when they are assured that the worst of his punishment shall be a simple restraint within the walls of an old Castle. A certain kind of people there is, with whom money plays a more forcible Orators part, than any perswasion of the dutiful service which they owe to the Commonwealth; these men will not be negligent to give intelligence, and also to procure it faithfully; provided that reward may help to line their threadbare purses, and exempt them from need to sell liberty unto Seminaries; and where affurance of gain is proprounded for discovery, what Master or House-keeper will trust his Servant with keeping of his Prieft, or fleep quietly while he is engaged to the danger of a Mercenary? I remember that in Italy it was often told me, That the bountiful hand of Sir Francis Walfingham made his Intelligences fo active, that a Seminary could scarcely stir out of the gates of Rame without his privity, which fuccess by mediation of gold, may as readily be obtained from Syvil, Vallidolid, Doway, Lovaine, Paris, and any other places, and by fore-

Particular officers must be appointed, what is to all is commonly performed by none.

fore-warning given of their approach, they may be waited for at the Ports, and from thence foon conveyed to a But whence shall the fafe lodging. stream flow that must feed this bounty? it is a doubt easily satisfied, if some thousands of pounds out of the Recufants penalties, be referved in stock, and committed by his Majesty unto the disposition of zealous distributers, who will not be afraid to conclude Perdat fiscus, ut capiat Christus; neither need we feek any further fuccour to repair decayed Castles, and therein to defray the charge of the Priests, with a fure guard to keep them, than the aforesaid forfeitures that by the Justice of the Law may be collected; which course, if ever it come happily to be entertained, and that Reculancy cease to be an ignominious prey to the subject, the proceedings for Religion shall be less blamed, and perhaps altogether unjustly accused by any graceless Gretzerus or Cacodamon Johannes, tincting their Pens in Gall and Vineger; for besides occasion of Calumniation given by futes of that nature, it is evident that many Recufants that would be indicted for the King, and the effecting the project aforesaid, shall escape without punishment, and be born out against the power of a private person; begging to

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no other purpose, than hath heretofore been used: and albeit the penalty be rated at 20 l. a moneth, yet was it never the Law-makers intent, that Warrant and fuch as were not able to pay fo great a summe, should go scot-free, but that according to the proportion of their ability, they should do the penance of reward, nor their Purses; whereas now if the voice of the people (which is faid to be the voice of God) is to be credited, the poorer fort is skipt over, as if they owed no fouls to God, nor duty to their Soveraign. A poor Man (faith one) is to be pityed, if he offend through necessity, but if he do amis voluntarily, he is more severely to be chastifed; for so much as wanting Friends, and means to bear him out, it sheweth that this fault proceeds from prefumption.

done for the Kings proper ule, hath his Countenance, but when a private man hath the gain, neither bearing out can be expected; and by consequence Recufants are free.

X.

Let us now pre-suppose, that all the whole Regiment of Jesuits and Seminaries were lodged in safe custody, may we then perswade our selves that Popery will vanish like a dumb shew: I am clearly refolved, that though it receive a great eclipse, notwithstanding without other helps the Kingdom of Antichrist will onely be hidden, as a Weed that seems withered in the Winter, and is ready to sprout out with the Spring. Temporal arms are remedies

Medicines that medies serving for a time, but the work in the spirits of men, are of greater force, and cure more furely than outward plaisters.

Spiritual fword is permanent in operation, and by an invisible blow works more than mortal man can The Word of God carrieth imagine. this two-edged Weapon in his mouth, which is to be used by faithful Minifters of the Church, whom pure Zeal, without respect to worldly promotion, or person, ought to encourage: Of Judges the Scripture faith Estote fortes; and daily we see that sitting in their judicial seats, God inspireth them with greater courage, than when, as private persons, they are to give their opinions; no less is the power of the Holy Ghost in his Servants, that out of the Pulpit are to deliver his Ambassage; let them therefore not be difmaid to speak out plainly, and tell the truth, without running a middle course between heat and cold, unprofitable descanting upon the Scripture, with an old postil, or for want of better matter waste the poor time shut up in an hour-glass, with skirmishing against the worthy Pillars of our own profession: Rumor which is ever ready to take hold of evil, hath raised a secret, though (as I hope) 2 causless suspicion, that there should be some combination underhand, by changing the state of questions, to put us in our old days to learn a new Caand when they have brought

Speech is the interpreter of the minde, therefore who fo useth in Divine matters to feak reservedly, and in a double Sense, he will be suspected to bave a double beart, and unfit to teach them that trust him not.

us out of conceipt with the Reverend Interpreters of the Word, to use us then as the Wolves (mentioned in Demosthenes Apology) handled the Shepheards when they had delivered up their Dogs. Most facred was that Speech of our gracious King, concerning Vorstius, He that will speak of Canaan, let bim speak the language of Canaan. How can we draw others to our Church, if we cannot agree, where, and how to lay our foundation? or how may we cleanse the Leprous disease of diffension, which the Papists which are least affured to themselves, and most doubtful of their is the Physician Salvation, are not ashamed to ascribe unto many of us? I would not have Ministers indiscreet, like Dogs, to bark against all, whether they know or know them not; I like better the opinion of Aristotle, who adviseth those that stand in guard of a place, to be curst onely to such as are about to endammage the City: If Pursevants or other Civil Officers, would learn to keep this rule, they might go about their business with much credit. The imagined fear of inviting the Romish Faction by force to deliver their Ghostly Fathers out of Prison, moves me not a whit; for I cannot believe that they esteem them at so dear a price, as they would run the hazard, by freeing others out of hold, to put themfelves

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A good Paffor of the Soul, and ought to apply his doctrine according to the tenderness or hardness of the Conscience, for want of which discretion, some mens zeal bath done hurt.

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False miracles are the food of Superstition, which by credulity delude ignorant people.

selves into their places. Some will fav that a man of Straw is a head good enough for a discontented multitude: That the Papists are very cholerick, it appears sufficiently by their writings, yet it hath pleased God to send those curst Cows short horns; that when they should not find a man of sufficiency to serve their turn, they were and lying news fain to do homage to Garnetts straw, forgetful as they are, that such stubble cannot endure the tryal of fire: But unto us, that ought to be Doers, as well as Professors of the Gospel, let this remain as a memorable Theorems Religion is the Mother of good order, Good order is the cause of prosperous Fortune, and happy Success in all Counsels and enterprises. Therefore in what estate soever there wanteth good order, it is an evident Argument that Religion goes backward. XI.

God which is t e great Lawmaker, by his fins, to the end puni hments may be inflictof Images: He that cannot

I have ever held it for a kind of Laws prevents Injustice to omit the execution of mean Laws, made to prevent the effects of Idleness, and then to apply main exed on it justly; tremity of the Sword, when the proas to avoid I- ling habit gotten by that vice comes dolatry, he for- to light; no less is the course unchabiddeth making ritable (with pardon for this presumption be it spoken) when we spare them live chaft, let that have no Religion at all, and cenhim marry, &c. fure those that can give an accompt of somesomewhat tending to that purpose. He that is in misery must be born withal if he speak miserably, and when the Child from his Mothers breast hath sucked nothing but Popery, a man had need to be angry with discretion if he hear him speak in the voice of a Papist. God calleth some by miracle, but the ordinary means is his Word: If that means in any place of this Land be wanting, of what Religion is it likeliest the people will be? I suppose that few men will gainfay my affertion, that outward sense will direct them to Popery, which is fuller of Pageants than of spiritual doctrine; and what is the cause that after so many years preaching of the Gospel, the common People still retain a scent of the Roman perfume? the Cause is for that the formal obedience of coming to Church hath been more expected than the infruction of private Families, publique A man is said to know so Catechizing is of great use; but the much as he refirst Elements thereof are to be learnt membreth, and at home, and those things which we no more; and learn from our Parents, stick more we remember furely in our minds; what was the learn in our cause why the Spartans continued their youth; there-Government so many Revolutions of fore if we will times, without mutation? Histories re- be wife when we are old, me cord, that learning their Countrey Cu- must be taught floms from their Infancy, they could when we are not be induced to alter them: And young.

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Out of Oeconomical Government, the diversity of States grow, and such as a Princes boule, is the State of the Commons for the most part: by which reason a Prince may by the Survey of his House, have an aim how the Commonwealth is affeeted.

in this our native foile we perceive, that the Common Laws which rely on antient Customs, are better observed than late Statutes, of what worth foever they be: So doth it fare with the poor people, which being once feafoned with the old dreggs of Papism, will hardly be drawn from it till the Learning of the true Faith be a Custom. I will pregrown to scribe no order nor Officers to effeet this; but I suppose that the antient laudable course, by the Bishow confirmation, will not be sufficient to fulfil so great a task, the Mini fter must and ought to be the Principal and immediate hand to give affiftance to fo gracious a work; and in cale any be defective in their duty, the Reverend BISHOPS may take no tice thereof in their several Visite tions.

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By the Laws there were Tything-men, who gave accompt for ten houfholds: Some Jach Officers might be good I hold the breaking of the Sabbath to be the ruine of our Religion.

Perhaps it will be thought a hard task to confirain old people to learn the A. B. C. of their Christian belief; but how hard soever it be, I hold itm incivility to prepare people of all Ago for the Kingdom of Heeven. By the order contained in the Book of Comin this case: for mon Prayer, on Sundays and Holy days, half an hour before evenling the Curate of every parish ought to examine Children sent unto him, in some ponts of the Catechism: and all Fathers thers, Mothers, Masters and Dames,

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should cause their Children, Servants, and Prentices, to refort unto the Church at the time appointed, there to hear and be obediently ordered, by the Curate, until fuch time as they have learnt all that in the faid Book iscommanded, and when the Bishops shall appoint the Children to be brought before them, for their Confirmation, the Curate of every Parish shall send or bring the names of those Children of his Parish which can answer to the questions of the Cate- that they learnt chisme; and there ought none to be how to distinadmitted to the Holy Communion, un- guish the comtil fuch time as he can fay his Cate-mon grounds of chism, and be confirmed. Many by the Priests times I have stood amazed to behold deceive poor the Magnificence of our Ancestors people. buildings, which their Successors at this day are not able to keep up; but when I cast mine eyes upon this excellent Foundation laid by the Fathers of the CHURCH, and perceive their Children neglect to build thereupon, with exceeding marvel, I restalmost besides my self, for never was there better ground-plot laid, which hath been seconded with less success: It was not the Bull of Pius Quintus on the Bishop of Londons Doors, or the forbearing to hang up Priests that have wrought this Apostacy, but the Idlehers

It were fit alfo

He that knows ness and insufficiency of many teanot the true cause of an evil, cannot help it but by change, which is a dana State.

chers, conspiring with the peoples cold Zeal, that hath been the Contriver of this Webb. Until the eleventh year of Queen Elizabeths Reign, a gerous guide of Recufants name was scarcely known; the Reason was, because that the zeal begotten in the time of the Mariam Perfecution was yet fresh in memory, and the late Persecutors were so amazed with the fudden alteration of Religion, that they could not chuse but say, Di-In those days there gitus Dei est bic. was an emulation between the Clergy and the Laity; and a strife arose whether of them should shew them selves most affectionate to the Gowhere good men spel: Ministers haunted the Houses of worthiest men, where Jesuits now build their Tabernacles; and poor Countrey Churches were frequented with the best of the Shire; the Word of God was precious, Prayer and Preaching went hand in hand together, until Arch-Bithop Grindals diffgrace, and Hatfields hard conceipt of Prophecying brought the flowing of those good graces to a still water; the name of a Papist smelt rank even in their own nostrils, and for pure shame to be accompted fuch, they reforted duely both to our Churches and Exercises; but when they saw their great Coryphans Sanders had flily pinned the names of

are afraid to call a Vice by the proper name, it is a fign that the vice is common, and that great persons (whom it is not (afe to anger) are infected therewith.

De Schism. Anglicano & vis. Mon. Ecclef.

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Puritans upon the fleeves of the Protestants that encountered them with most courage, and perceived that the Word was pleasing to some of our own side, they took heart at grass, to set little by the service of God, and duty to their

Soveraign.

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Therewith start up from amongst some think us, some that might have been com- that if these mended for their zeal, if it had been mens zeal had tempered with discretion, who fore-by order been running the Authority of the Magi- it felf otherfirate, took upon them in fundry places, ways, and a and publiquely to censure whatsoever task set them agreed not with their private conceipts, to do some good with which gross humours vented in thing in the Pulpits and Pamphlets, most men grew church, they to be frozen in zeal, and in such fort might have benummed, that whofoever (as the been reformed, worthy Lord Keeper Bacon observed or made harmin those days) pretended a little spark on. of earnestness, he seemed no less than Head-strong red fire hot, in comparison of the other. Papists are not And as some fare the worse for an ill easily subdued, Neighbours sake, dwelling beside them, not be suffered lodid it betide the Protestants, who to grow to a leeking to curb the Papists, or re- Fattion, Difprove an idle drone, were incontinent- cretio pro ly branded with the ignominious note re quid fit res, of Precision, all which wind brought must lay the plenty of water to the Popes Mill, and burthen in the there will most men grind where they right place. fee appearance to be well ferved.

lege discerne-

XII.

Without Reformation in this point, Popery will still encrease; but as all vertuous enterprizes are difficult, so is this most intra-A wife Householder will caft up his reckonings to fee what loss or profit he bith made in a year.

If without great inconveniency, the Children of the Papists could be brought up out of their Company, it were a happy turn, but I find it to be fullof difficulty; there is provision made to avoid Popish School-Masters, but there is no word against Popish Schoolmistresses, that infect the filly Infants while they carry them in their arms; which moveth me to suppose that the former proposition to examine how Children and Servants are brought up, and truely to certifie the lift of the Communicants and Recufants, will be the readiest means to let his Majesty know the yearly increase or decreased the Church in every Diocess. whosoever shall fend his Children, orany of his Majesties Subjects to be placed in Monasteries or Seminary Colleges, or Popishly to be brought up in foraign parts, I think that for punishment, both one and the other worthily might be disfranchised of the priviledges due to English men, so far forth as any good by the Laws may descend to them, but not to be exempted from the Penalties thereof in the regal jurisdiction of the I know well that contradiction is odious, and makes a man feem ambitious to be thought more understanding than others, in which case the Spaniard useth only to term him pre-

Guevara Epist. Aureæ.

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fumptuous, whom he would call Foolif civility would bear it; but in my defence, I hope it shall suffice again to revive my former protestation, that I discourse by the way of Proposition, rather The Law which than arrogantly of defining any thing, took immediate with pardon therefore may I be per-notice of an ofmitted to fay, that the first easie Law of fence, gave a twelve pence, inflicted on him that and corrected could not give a reasonable excuse for the poor as well his absence from Church on Sundays, as the rich. was one of the best Ordinances that hath hitherto been enacted; but while we lought to make new Statutes, favouring of more severity, we neglected the old, and were loth to execute the new; for it is a certain rule, that whofoever in policy will give liberty, and yet seem to suppress a Crime, let him sharp Laws procure sharp Laws to be proclaimed, that stand upon which are necessary only for some times, a long process, and rare occasions, to be put in execu- feem to dispense tion, but not to be an ordinary work with the vice. for every day of the week; daily use likewise teacheth us, that it is less grievous to punish by an old Law than by a new, for fo much as truth it felf feldom gets credit without proof, and it is hard to free the people of suspicion, that new Laws are not rather invented against the particular persons and purses of men, than against their corrupt manners; by force of which reason I am induced to con-L4 ceive.

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The allegiance to God ought to precede the temporal obedience; for if the first ed, the second will follow of it felf.

ceive, that the old use of the Church contained in good nurture, and Ecclefiaffical censures, will much more prevaile to muzzle Popery, than any may be obtain- fresh devices whatsoever; neither do I think it blame-worthy to affirm that our Cause hath taken harm by relying more on the temporal than the spiritual Arms; for while we trusted that capital punishments should strike the stroke, we have neglected the means which would for the most part have discharged the need of such severity; the Oath of Allegiance is not offered generally to Servants and mean people, who if they had taken the Oath, by absolution of a Priest might recoyl from it, or change their opinion at leafure, without any ready means to discover their Legerdemain, that Oath I fear will not be often pressed, and to them that shift from place to place, how can it be tendred? The principal Papifts now cover themselves in the crowd of the multitude, but if we can discover the affection of the multitude, they will eafily be unmasked, and being fingled out, rest ashamed of their nakedness (which under correction of better judgment) may be effected, if every new comer to inhabit in a Town, and Servants newly entertained, within a week or fourteen days, be caused to repair to the Minister there in pretence

This course will discover more than the Oath of Allegiance, and prevent many from falling off, by reason of the quick discovery.

fence of the Church-wardens and other honest men, to subscribe unto such brief and substantial Articles concerning faith and allegiance as shall be according to Gods word and justice ordained to distinguish the sheep from the Goats; in foreign Countreys every host is bound to bring his guest before an Officer, there to certifie his name, with the occasion of his coming, and intended time of aboad in those parts, and in case he stay longer, he must again renew his licence; fo curious and vigilant are they also to keep their Ci- so long as houties from infection, that without a Cer- ses and lodgings tificate witnesling their coming from in London are wholfom places, they may not escape the Priests will the Lazaretto; no les ought we to be be received, and watchful to prevent the contagion of from thence our Souls, than the other Nations are of shall the countheir bodies. Every thing is hard and fearcely pleafing in the beginning, but with time some such course may be readily put in execution, which I propound rather as matter for better heads to work on, than peremptorily to be infifted on in the same terms; but lest any charge me with temerity, that where I defire to know the multitudes inclination, by the means aforesaid, I satisfie my self with their Parrets language, pronouncing it knows not what, I think it not impertinent to put them in mind, that heretofore I have required instruction, both precedent

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If we can prevent the increase of Papists, those that now live must either be reformed, or in time yield to nature, and then shall a new age succeed of Chistians, by education made Religious.

precedent and subsequent, and am ever of the mind, that though all this cannot be done at once, yet it is necessary always to be doing our best; knowing, that not to go forward in Religion, is the ready way to go backward; it is not the outward obedience of coming to Church, that discovers the inward thought of the heart, it is the confession of the tongue that must utter those secrets, and where the Curates are infufficient, or the Parish great, I wish they had Catechists to assist them, maintained by the purses of the Recusants, which pension being collected for Gods cause, will free us of scandal though it grieved them to pay the spiritual Army waged against their own stratagems; furely by giving them way in petty matters, they are grown to be very masterful in their party. Plato affirmeth that the popular state proceeded from the Licence which the people took to make immoderate applauses in the Theaters, when as by arrogating that immunity without controllment, in presence of their Governours, and perceiving the Nobility to joyn with them in the fame passions, they thought their heads as worthy to govern, as any of those were made out of the same mould: In like manner while we suffer ignorance openly to maintain fuch petty glimps of Popery as are thought to be scarce worthy

thy to be looked at, in small matters The broachers run an indifferent course, which neither of a bad cause makes fure friends nor feeble foes, unawares they take the Bridle from us, and eat out Religion; as it were by an in- flowly, but if sensible Gangrana:

Principiis obsta, sero medicina paratur Cum mala per longas invaluere moras.

For by fufferance of breaking small laws people are boldned to fet the greater at

nought.

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To comprehend all things in a Law which are necessary to the reformation, I neither hold it profitable nor expedient, yet it is discretion to provide for the most important; smaller matters whereof the Laws speak not are to be commended to the discretion of Parents, Ministers and other Reverend persons, who by example and advice may prepare younglings by education and Cuttom to obey the Laws, especially such as are in high place ought in this behalf to be like Cefars Wife, Non Solum Crimine, Sed e- Most men will tiam Criminis suspitione vacare, and with affect to be such fuch circumspection to behave them- as the highest selves, that the world may conceive, in Trusts, and requiring obedience to God, and their Soveraign, that they hold the multitude A great man rather for companions than flaves; If is an Idol in the great men take another way, they may eyes of mean People, and seduce many by example, though by draws many to words they express not their concealed imitate his opinions, Tace & loquere, said God to actions.

being touched in Conscience, at the first move they prevail they grow tyrannous beyond measure.

Favours.

Mofes,

Moses, it is the speech of the heart,

which utters more than letters, or filla-And in our common Laws it is held maintainance, when a great perfon only by his presence countenanceth a cause; neither let us secure our selves with this argument, The Papists are pliable in small matters, Ergo, they will yield in greater; And because they took no Arms in 88. therefore it were needless curiofity to suspect them now: for who knows not that small baits are used to take the greatest Fish, Vt cum esca una etiam bamus devoretur. ness is the finews of wisdom, and nothing is more dangerous than to be fe-Few Laws well cure in matters of State. Therefore for the Laws already made, I wish that the most effectual of them which least concern life, may be executed; for better it were not to make them, than by neglect to fet them at liberty: Seeing that many offences there are which men would abstain from, if they were not forbidden, but when a strict Commandment is avoided without punishment, thereout springs an unbridled license and hardly to be reformed by any rigor.

To conclude, I say freely, that whoso endeth his days by a natural death, he shall be subject to many mens dooms for every particular offence; But when

for Religions sake a man triumpheth

executed are better than many.

over

over the fword, that one eminent Vertue razeth out the memory of other errors, and placeth him that fo dieth in A crown of Paradife, (if common opinion may be Glory once atlawfully vouched) which glory having many followers and admirers, maketh pense with foreven dull spirits to affect their footsteps, mer faults. and to fell their lives for the maintenance of the same cause. I need not envy the name of a Martyr to the Jesuite; for his cause, if it be rightly weighed, will blanch that title; but I defire to have all those Lineaments defaced, which may compound that counterfeit Image; in profecuting of which purpose, if I have failed in my advice, and by confused handling, intricated the question, I humbly request, that a wife mans verdict may mitigate the heaviness of the censure.

tained, bath power to dif-

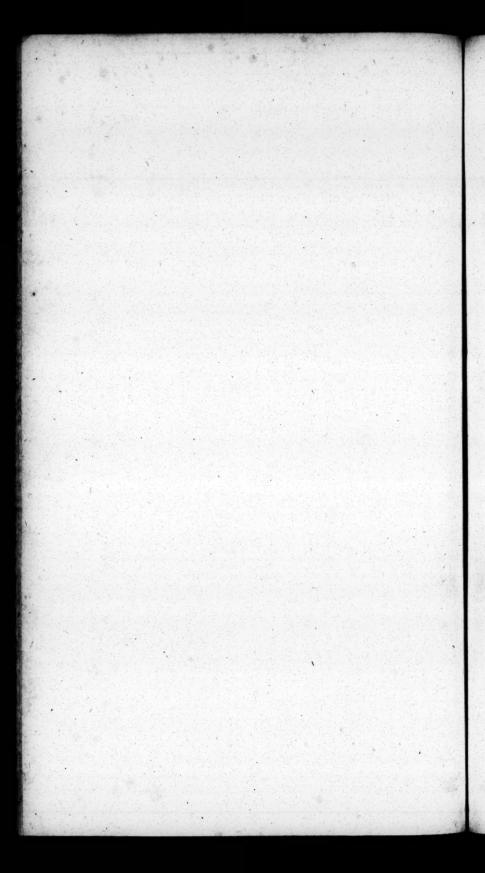
It is neither good to praise bad He Counsels best, Counfels, because of their good success, nor to condemn good Counfels, if the and the comevent prove not Fortunate, lest many monwealth bebe animated to advise rashly, and others fore any partidisheartned to Counsel gravely.

that prefers the Cause of God, cular.

Illi mors gravis incubat Qui notus nimis omnibus Ignotus moritur fibi.

Seneca Trag.

August 11. Anno Domini 1613.



THE

MANNER

MEANS

HOW THE

KINGS

ENGLAND

Have from time to time

SUPPORTED

And repaired their

ESTATES.

Written by Sir ROBERT COTTON, Knight and Baronet, Anno nono Jacobi Regis Annoque Domini 1609.

LONDON: Printed in the Year. 1679.

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MANNER
AND
MEANS
HOW THE
KINGS
OF
ENGLAND

Have from time to time

SUPPORTED

And repaired their

ESTATES.

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HE Kings of England have fupported and repaired their Estates,

First, by an Annual proportioning their Issues, and Expences with their certain and Casual

And that COUNCIL, either by PARLIAMENT.

M Secondly,

Secondly, By abating and reforming the Excess of houshold, &c.

Thirdly, By raifing of Money, and improving the Revenues of the Crown.

First, For proportioning of the Issues,&c.

Hen. 4. Ex rot. orig. inter acta Concil. Hen. 4. Henry 4. Anno 12. When the Revenue and profits of the Kingdom, together with the Subfidy of Wool, and Tenth of the Clergy, amounted to no more than 48000 l. of which 24000 marks were alotted for expence of House; most of the rest to the Guard of the Sea, and defence of this Kingdom, the Realm of Ireland, and Dominions in France: In this estimate the profits by Wards and Marriage, was but 1000 l. And then an Ordinance was made by the King, Prince, and all His Council there named in the Roll.

The like was Anno 11. when for the charge of House was appointed 16000l, and 7000l. to the City of London, in discharge of the Kings debt to them.

Henry 5. Exrot. in a-Etis Concil. anno 2. Hen. 5. in Fin.

Hen. 5. Anno 2. did the like as his Father, entring upon the Roll as an Ordinance in future, that the Treasurer of England, or the Exchequer, shall Annually make declaration of the state of their Office, and the Revenue of the Realm, together with the charge of the Kings House, Chamber, Wardrobe, Garrisons, Navy and Debts.

Anno 3. Hen. 5. the like Assignments

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were made proportionable to the Reve- Ex rot. orig. venue which in the great Custom of an. 3 Hen. 5. Woolls, the petty Custom, Tunnage and Poundage, revenue of Wales, and the Dutchy of Cornwal, the Hamper, the accounts of Sheriffs, Escheators, the Exchange or Bullion, and the benefit of Wards and Marriage (then rated at but one thousand marks apiece) rose not to above 56966 l. And being at fuch time as he undertook the Conquest of France.

Anno 9. Henry 5. the revenue of the Ex ordinat. Kingdom amounting to 55743 l. 10 s. anno 9 Hen. 5: to d. was fo by the King, with advice of

his Council, ordered, as before.

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And by this Record it appeareth, that the Clerks of the Navy, and not the Treafurer was the Officer only for that place.

Hen. 6. anno 12. in Parliament, Crommel Hen. 6. Ex then Treasurer, delivering up an account 12. Hen. 6. of the Exitus and introitus of the Exche- n. 24. quer, setled the Estate of his expence, of which there was allowed for his House 169781. and to his Chamber and Wardrobe 2000 1. The rest to defray the debts and necessary occasions of the State.

Queen Eliz. anno 12. At which fime Queen Eliz. besides the Wards and Dutchy of Lan- Ex comp. Dine Burghley Thecaster the profit of the Kingdom was faur. 188197 l. 4s. the payments and affignments 1106121.13s. of which the Houfhold was 40000 l. privy Purse 2000 l. Admiralty 30000 1. which by an effimate 1. May, anno 1604. Was 40000 l.

rot. Par. anno

M 2

And is now fwoln to near 50000l. year. ly by the error and abuse of Officers.

C Econdly, by abating and reforming the Excess.

1. Of Houshold.

2. Of Retinue and Favourites.

Of Gifts and Rewards.

First, For abating and reforming the Excess of Houshold, either,

> (Parliament, Council Table.

1. By Parliament.

Edw. 2. Ex Angl. M. S. folio 29.

Anno 3. Edw. 2. An Ordinance was made pro hospitio Regis, in ease of the people oppressed with Purveyance by reason of the greatness thereof; and the motive of that Ordination was, A l'honneur de Dieu, & a honneur, & profit de sainct Eglise, & al'honneur de Roy & a son profit, & an profit de son peuple. selon droit & resonel serment que le dist nostre Signeur le Roy fist a fon Coronement. About this time was the Kings House new formed, and every Officer limited his charge and falary.

Ex libro Do. Aula Regis.

Anno 36. Edw. 3. the Houshold was reformed at the Petition of the People. Anno primo Rich. 2. the Houshold was Parl. 1. Rich. 2. brought to fuch moderation of expence,

Edw. 3. Rot. Parl. anno 36. Edw. 3. Rich 2. Rot.

> as may be answerable to the revenues of the

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the Crown. And a Commission granted Rot. Parl. an. at the Petition of the Commons, to survey Rich. 2. Rot. 4.
Parl. an. 5 & 6. and abate the houshold; which not ta- Rich. 2. king defired effect, Anno 4. the Commons petition that the excessive number of menial fervants may be remedied, or otherwife the Realm will be utterly undone, and that his houshold might not exceed the ordinary revenues of the Realm.

Anno 4. Henry 4. The people crave a Hen. 4. Rot. reformation of the Kings House. And Parl an. 4. 7 & Anno7. that he would dismiss some number of the retinue; fince it was now more chargeable, but less honourable than his Progenitors; and that the Antient Ordinances of the houshold, in ease of the people might be kept, and the Officers of the houshold sworn to put the Ordinances and Statutes in due execution, and so consider the just griefs of his Subjects by unjust Purveyance contrary to the Statute. That hereafter vous poiez Ex Ordinat. vivre le voz biens propres en ease de vostre in Rot. Act. peuple, which the King willingly doth, as Hen. 4. marappeareth by an ordination in Council, ked R. R. whereby the charge of the houshold is limited to 16000 Marks.

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Anno 12 & 18. Henry 6. The charge Hen. 6. Rot. of the Kings House is reduced to a cer-Hen. 6. tainty, and leffened by Petition and Order in Parliament.

Anno 12. Edw. 4. The King promifeth Edw. 4. Ex. to abate his houlhold, and hereafter to Rot. Parl. an. live upon his own: So fetling a new form 12. Edw. 4.

11. Hen. 4.

Concil. an. II.

Ex. lib. ordin. Hospitii temp. Edw. 4.

his Court which is extant in many hands. Intituled, Ordinations for the Kings house. And to ease the charge of the Kings

house, the Queens have allowed a porti-Rot. Parl. an. on of their joynture futing to their own 27. Edw. 3. 7. expence to the Treasurer of the houshold, Hen. 4. n. 3. Mich. recep. 27. Thus did Philip the wife of Edward 3. Hen. 6. n. 9. and likewise Henry 4. wife anno 7. And

Henry 6. wife allowed 2000 l. a year out of her Estate.

2. Excess of the Houshold abated and reformed by the Council-Table.

Edw. 2. Ex Aula Regis fad.temp. Ed.4.

Edward 2. caused his houshold to be certain in allowances, making thereof a book by the way of ordinance, which is called Aul. Regis.

Hen.4. AEt.Contil. 8. Hen. 4. marked P. P.

Henry 4. causeth his Son the Prince, and the rest of his Council, to ordain fuch moderate governance of his House, that may continue au plaisir de Dien & de peuple.

Hen. 6.

Henry 6. anno 17. reduced his charge of House to 12000 l. whereof 2000 l. was out of the Queens joynture.

Ed. 4. Ex. lib. ord.tem. Edw.4. Ordinat. Car. Wolsey Hen. 8.

Edw.4. anno duodecimo reformeth it again, and publisheth a book of orders for their better direction. Which after Cardinal Woolsey for the more honour and profit of the King amendeth, and that ftill remaineth the ground-work of the present Government: Which being now so much corrupted, it may seem fit

either,

either to put down the Tables, and leave all attendants to allowance of money, as France and Spain doth, or elfe by fetting up the Hall again, reduce the houshold to the best, first, and most magnificent order. So all things being spent in public, will be to the Kings honour, and the fecret waste by Chamber, diet, and purloining, prevented to the Kings benefit, For there is never a back-door in Court that costs not the King 2000 l. yearly, and few mean houses in Westminster, that are not maintained with food and firing, by the stealth of their Court-Instruments.

By abating and reforming the excess of Retinue and Favourites.

Thus did Henry 2. with William de Gervas. Dora-Ipre Earl of Kent, a Netherlander, and all bern. his Countreymen and followers, when they grew heavy and a burthen to this State, unable to foster more than her own natural children.

Thus Richard 1. did with Otho Earl Rich. 1. Ex of York, and all the Bavarians, although Richardo cahe was the Son of his Sifter, taking from ta Rich. 1. him that Earldom, for that the People opposed it, and giving him in exchange the title of Poictife.

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Thus Henry 3. did with his half-bre- Hen. 3. Ex lib. thren the Earl of Pembroke, and the Bi- S. Albani & shop of Winchester, and all the Poictovins Wil. Rishang. their followers.

& lit. Baron. Papa.

M 4 Thus Edw. 2. Ex ordinat.3. Edw. 2. in li. legum manuscript. fol. 285.

Thus did Edward 2. by his Ordinances, Que tout le lignage Sire Pieres de Gaveston soit entirement ouste de estre entoines le Roy & de son service. Item Burgois de Til soit ouste & son sias que est mereschal del Eschequer. Item que Bertram Assabi & son Frere & ceux de Gascoigne, & Aimyrich de Friscomband soint oustre & ses terres prises en le main le Roy.

Rich. 2. Ex Rot. Parl. an. 10. Rich. 2. Thus Rich. 2. did with the Behemians anno 10. by an Act of Parliament at the petition of the people surcharged.

Hen.4. Ex Rot. Parl. an.7 & 12. Hen. 4. Thus Henry 4. did likewise with the Gascoignes and Welsh overburthening and impoverishing the King and Realm with perpetual suits, so that in Courts (as the Record saith) there were ne admill substancedes personnes vaylantes & suffesants: Si Besoigne servit mes de Rascaile pur la grendre part.

By abating and reforming the excess of Gifts and Rewards.

Rich. 2. Rot. Parl. an. 21. Rich. 2. an. 2,4, & 5. Hen. 4. n. 9.

Hence was it that the wisdom of former time, foreseeing the mischief that the open hand of the Soveraign may bring, the State made a Law 21 Rich. 2. that whatsoever cometh to the King by Judgment, Escheat, Forseiture, Wardship, or any other ways, shall not be given away, and that the procurer of any gift, shall be punished.

Hen. 4. Rot. Parl. an. 7. Hen. 4.

He in

This the Parliament continued 7 H.4. until the King were out of debt, making frustrate the grant, and ordaining a personal process.

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nalty of double value to every mover or procurer of any fuch.

The like anno 11. Henry 4. And that Rot. Par. ann. no petition for any thing should be deli- 11. H. 4. n. 23. vered the King, but in the presence of the Council, who might examine it, left the King's wants should light upon the Commons.

And to keep the hand of Henry 6. Hen. 6. Pars. from wastful giving, the Council in-Hen. 6. m. 24. duced him to convey to the Arch Bithop of Canterbury and others, all profits by Wards, Marriages, Reliefs, Escheats and Forfeitures, to defray the charge of his house.

It is one of the greatest accusations a- Ex rot. Parl. gainst the Duke of Somerset, for Suffering the King to give away the possessions and profits of the Crown in manner of a spoil: for so are the words of the Record. Rich. 2. Ex

And it was made the first and chiefest rot. Parl. an. 1. Article to depose Richard 2. for wasting Hen. 4. and bestowing the lands and revenues of the Crown upon unworthy persons, and thereby over-charging the Commons by exaction.

T Hirdly, Raising of money, and improving the Revenues of the Crown.

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Grant of the Subject, Either by the Power absolute in the Sovereign. 1. Grant

an. 28. Hen. 6.

of the Subject, which by Lones Or
Benevolent.

Ex lib. rub. in General, as in Parliaments, wherein they give the King part of their own, by way of Retribution only; as

For Defence of the State.

Ex Jo. Everfden.
Ex hist. Rossens.
Ex rot. Parl.
temp. Ed. 3.
Ex rot. Par.
annis 2, 3, 5.
Rich. 2.
Rot. Parl. 8, 9.
Hen. 4.

Hence grew the Scutage granted to Hen. 2. Richard 1. John and Henry 3. to Edward 1. divers Fifteens and Tenths for his wars against the Scots and Welshmen. The Subsidy of Wools and other Contributions to Edward 3. for his Wars: And the like granted to Rich 2. annis 2.3.7. so they may be imployed in the Wars: and particular Treasurers to accompt in Parliament. So in the 8 and 9. of Hen.4. on the like condition.

Tunnage and Poundage begun the 45. Edw. 3. had hence its originals

Ex Rot. Parl. and therefore 13. Hen. 4. and 1. Hen. 5.

an. 13. Hen. 4. they are granted so in express words;

or 1 Hen. 5. and that they proceed of good will, and
not of duty. Precedents of this nature

are plentiful in all the Rolls.

For maintenance of Religion and the Church.

As in the year 1 166. to Hen. 2. was

given twelve pence in the pound: and Ex Benedict. the 18. Edw. 1. a fifteenth was granted Monacho in to expel the Jews. And Anno 4. Rich. 2. Ex Adam. a tenth of the Clergy, and a fifteenth of Merioneth ex the Commons, for his help to suppress Ret. Par. annothe Wicklivian Heresie.

4. Rich. 2.

For Support of the Laws and liberty of the Common-Wealth.

So did the State to Hen. 3. anno 27. Ex Rad. Cogfor confirmation of the great Charter, shal. Ex hist.
for the like anno 115. was granted 29. Par. an. 23.
Edw. 1. and 13. Edw. 3. and 7. Hen. 4. 3. & 7. Hen. 4.
That the Laws may be executed against Ed. 1. 13. Ed.
Purveiors.

For redress of the Aggrievances.

As in the 15. Edw. so that the King Rot. Par. anno would perform their petitions, or else 15. Ed. 3.n.16. they held themselves not bound to pay

the ninth they had given.

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The like was the 7, 8, 9, 10. and 11. Ex rot. Par. Rich. 2. The 10. and 15. granted the an. 7, 8, 9, 10, 4. and 7. of Hen. 5. is upon condition, II. Rich. 2. that the King laid no impositions upon the State. And 7. Edw. 4. the State re- 5. rot. Par. 7. lieveth the King, so he will promise to Edw. 4. live hereafter upon his own, and not burthen the State, the which he there protesteth to perform.

And it is to be observed that to im- Ex original. prove the grants of Subsidies to the ex- an. 3. Rich. 2.

treamest

value, there were new Commissioners appointed to furvey and advance mens fortunes above the estimate of the former taxes, and Commissions have been granted out, as 3. Richard 2.

Or to enable him out of his own by an Act of Resumption of Lands, offices, annuities.

Thus did Hen. 3. anno 6. and Edw. 2. Rot. ordingt. an. 5. & clauf. anno 5. to 9. & 10. by an ordination of the Prelates, Earls and Barons. an. 9, 0 10.

Edw. 2. All grants made by Edm. 3. to un-Rot. Par. an. I. worthy persons, Rich. 2. resumed anno Rich. 2. Rot. Parl. an. 1,2.6 primo, and by Hen. 4. anno 6.

6. Hen. 4.

All Pattents for life or years fince 4. Edw. 3. were resumed.

Ex Rot. Par. an. I. & 2. Hen. S.

At the petition of the people Hen. 5. revokes all grants out of the principality made to unworthy persons, and all annuities out of the customs of wools, deducting out 10000. l. a year out of all other annual pensions ratably, leaving the remain, if any, to the Patentees.

Hen. 6. annis 28, 29.33. resumeth in Rot. Par. anno 28, 29.3. Hen. 6.

England all Lands, Offices, Liberties and Grants from anno primo, and the like anno 2 I. in Ireland.

Ex act. Conf. So did Edw. 4. annis 4. 7. 12. an. 21. Hen. 6. Hen. 7. anno 2. refumed all grants made Rot. Par. an. 2. by Edward 4. or Richard 3. Hen. 7.

Parti-

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Particular by Lones Or Or Benevolences. Compulsive.

First upon the Lones Voluntary, as upon affurance of Bond of the Nobility.

So was William de la Poole bound for Rot. Parl. an. Edward 3. anno 13. in great sums, and concil. 20. 22. the Duke of Glocester anno 20. Hen. 6. Hen. 9. and the Cardinal pawned his silver Vessels for Hen. 6. debt.

Upon pawn of Jewels.

Thus did Hen. 3. anno 26. to the Clauf. an. 26. Arch-bishop of Tork, and when his own Hen. 3. were at gage, he took Aurum & Jocalia faretri sancti Edwardi Confessor. and pawned them.

Edward 1. imployed one Andevar ad Clau. 29. Ed. I.

jocalia sua impignoranda.

Edward 2. pawned his Jewels to the Rot. fran. an 9. Lord Beaumont.

Edw.3. pawned Magnam Coronam An- commune insc. glie to Sir John Wessingham for 8. years. 30. Edw. 3.

Richard 2. pawned vasa aurea et di- Parl. anno 7. versa jocalia to Sir Robert Knolls. Rich, 2.

Henry 4. Invadiavit tabellam et tresellas suas argenteas de Hispania.

Henry 5. pawned his great Crown to Parl. auno 5: the rich Bishop of Winchester.

Hen. 6, to the same man then Cardinal Par. an. 10. 12. pawned 29. Hen. 6.

pawned many parcels of his Jewels in the 10, 12. and 29. of his reign, and the like to many others:

And the late Queen to ease her people, did the like with her Jewels in the Tower besides the often morgage of her land.

Lones voluntary upon Assignments of Customs and Subsidies.

Act. concil. an. 22. Hen. 6. Ex billa sign. an. 15. Hen. 6.

So did Cardinal Beauford lend 10000.1. to Hen. 6. anno 22. upon security of the Customs of London and Southampton, the King indenting to turn the course of 12, Edm. 4. most trade thither. And Hen. 6. anno 15. and Edw. 4. anno 12. did secure their debts by affignment over of the next Subfidy or aid that shall be granted from the Church or Laity to them, being a devise in truth to draw on a supply the fooner from the State.

> Lones voluntary upon the Great Seal, or the Privy Seal.

Rot. original. an. 3. Hen. 4. marked B. B.

The Great Seal, under which they should have without paying Fee a Patent sealed for repayment of their dues by a day certain.

The Privy Seal, which is of late the most in use; and it is worthy of observation to fee the willingness of former

times in respect of these.

Rot. act. conc. 13. Hen. 4.

In the 13. of Hen. 4. there is a Roll intituled

intituled les nomes de ceux que ont da prefler an Roy les sommes escrits. The Archbishop of Canterbury lent 1000 Marks, the Bishop of Lincoln as much, the Bishop of Norwich 600 1. the Bishop of Rot. act. con-London 500 Marks, the Bishop of Bath cil. 13. Hen. 43 400 Marks, the Lord Privy Seal 200 1. the Clerks of the Chancery 1000 Marks.

Particular Grants of the Subject by Lone compulfive.

So were the Merchants of Florence, Ve- Ex ordinat. nice and Luke, compelled by an order in concil. an. 3. Council 3. Hen. 3. because they had by Hen. 5. marked N. N. grace et sufferance du Roy graunts, priviledges et reportants grand lucre pour le exercise de leur Merchandre en le Angleterre. And the persons that refused to lend, were committed to the Fleet, neither were the English more free, in anno 30. Henry 6. divers being enjoyned to attend the Council-table, or else to pay the demanded Lone.

In the time of Hen. 8. anno 14. of his Ex instruc. Reign, he exacteth by way of Lone, ten comifs 14. pounds in the hundred of all Goods, Hen. 8. Rot. Jewels, Utenfils and Land, and according Parl. 12. Rich. to the extreamest rate revealed by Oath 2. of the possessors. Notwithstanding there is a Law 2. Richard 2. that none shall be denyed in demand of any Lone, his reasonable excuse.

Particular Grants of the Subjects by contribution or Benevolent gifts.

Ex Charta Episcop. Cant.
Ro. claus. 9.
Edw. 1. claus.
35. Edw. 3.
Ex instruct.
original, 20.
Hen. 6.

Thefe were of old usual and free, and therefore called Liberalitas populi, by Rich. I. And Curialitas; by Ed. I. Ed. 3. Hen.4.& Hen.5. confessed to proceed ex spontane a voluntate, nec de jure vendicare potest. Yet did Hen. 6. anno 20. in an instruction to Commissioners imployed in procuring a Benevolence, fay, that for for much as by the Law he might compel all his Subjects, and at their own charge to attend his; yet he was contented to spare such as would but contribute as much after his degree and reputation, as two days in his personal service would stand him in, thereby implying a necessity in them to give, to escape a further expence.

Ex act. Parl. an. 3. Maria. This Law, upon which Hen. 6. grounded himself, was a Statute in Q. Maries time repealed. And that since repealed this last year, hath made a reviving of the former, whereby the King re-admitted into his old advantages, and the subject in the former mischief. And Hen. 8. anno 17. Although he entituleth the benevolence he sought with no other stile than an amicable grant, yet he threatened the resusers with convention before his Council, imprisonment, and consistation of Goods.

Ex instructione origin. 17. Hen. 8.

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THe Kings raise money, and improve the revenues of the Crown.

by power absolute in C1. Lands, the Soveraign, in dif- < 2. Merchandize. poling, 23. Regalities.

1. Lands, as by felling; which hath been often and old, if they were not of the Antient demeasne-land, which our forefathers held impious to alienate from the Crown, and those were such Lands as go under the title of Terra Regis, in the Book of Domes-day, and were Lib. Domesthe Lands of Edward Confessor : of other day. Lands I never observed question, neither do ever find that Acts of Resumptions ever reached to Lands that were fold for valuable confideration.

By passing in Fee-farm, except places of the Kings Residence, Parks, spacious Wastes or Forrests, all the Lands of the Crown, which remain either in the annexation, custody Lands, or Queens pinture, and exceed not yearly 32000 l. These, although largely estated out in leveral natures, some for lives, some for years; will one with the other be advanced to a treble rent, which amount to 96000 l. leaving an annual improvement of 64000. And if the offer be not made restrictive for the new Tenant, there is no doubt but his Majesty shall find ready and hearty undertakers amongst the Gentry and Nobility too, who

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who have any place of Residence near any his Majesties Mannors; and the Kings fecurity the better, fince their abilities will fettle the Fee-farm rent upon

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more Land than the purchase.

If any shall object against this, a loss by Fines and Profits of Courts, a prejudice in not serving necessity (as of late) by fales or diminution of Regalities infe. fure of fo many Royalties. It may be answered to the first, that the casual profits of Courts never defrayed to the prefent Officers their fees and expences; and this appeareth from a collection made the 44. year of the late Queen where the total iffue of fuch certain charge exceeded the receipt of fud chances above 8000 1.

To the second, if looking upon thele veral rates of the Kings Land, exposed Fee-farm fales, we find some at 50 other at 2 I years as to the late contracters and make out of these extreams a medium of the largest 40 years, and set on the other fide the Common and current estimate for dead Rents 15 years purchase: We must find that 50 1. Land sold un-inproved respectively to the like trebled by a Fee-farm, will be 2 50 1. loss to his Majesty in the sale. As for Regalities, though the it may add somewhat to a Subject, in increating such his petty command, it can nothing to a Soveraign, whose transcent dent power drown's in it all such subordinate

dinate dependences and regards. But if we confider befides the former improvement, the increase of casual advantage, and diminution of certain charge, we hall have just cause not to continue this ourse; for if the Commissioners in this bufiness, may be ordered by instruction preserve upon every Mannor of above noper annum, a tenure in Knight-fervice by half a Fee, and of above 50 1. in Capite by an intire Fee, and of the purchase to my his Rent into the receipt himself half yearly, and strike there his Tally: theformer will advance the revenue accidental of the Crown in Wardships, minier seisin, alienation and aides; and helatter cut off at once so many their unecessary Receivers, Auditors, Stewand, Bayliffs and Clerks, as stand the ling in yearly above 12000 l. As for oterdues or casual Revenues, which now fall under the charge of these Offiers, the Collection and payment may has it hath been with the rest from the time of Hen. 2. until of late days laid on the Sheriffs of the Shire, and all the accounts left to the 2. Auditors of the press draw up, and Clerk of the Pipe to enrin Magno rotulo, as in former time, for must feem strange to all men of judgcan tent, that it should be with those Offiwho had their beginning but since bor- e 25 year of Hen. 8. by addition of his (who had their beginning but fince ew revenue of 150000 l. from the suppressed N 2

pressed Monasteries) otherwise than with all things in nature and reason, Cessante Causa cessat effectus, not to be difcontinued, when as all Crown-annexed Lands that gave them their just imploy. ment, are for the most part passed from the Soveraign into the Subjects polfeffion.

Besides this of the general disposingin Fee-farm, there hath been a project in particular to infranchife the Copy-holders in the feveral Mannors, which I should hold to be of more prejudicen his Majesty than the others, bringing with it all the former inconveniences, lok of Fines, Regalities, and advantages of fale, and being without many of theat vantages, as Wardships, Primier Seife, alienation and aids; for no man will bu quillets but in foccage, & discontinuance of Officers, who must still remain, though they can bring the King but little benefit

Kings raise money, and improve their Rat nues, by Farming out for years, Lands, Cafualties, or Wastes.

Rot. Parl. an. 7. Hen. 4.

As in the 7 Hen. 4. the State held more just to help the King out of his on King than to burthen the Common-wealth of and therefore gave way by Parliamo Th to the King to improve up his Land out though in Lease, provided that the Brig Leffee thould have refusal of the but all n

gain if he would.

Rot. fin. an. 2. Edw. 2. Rot. Parl. an.

15. Edw. 2.

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Edw. 1. anno 2. granted a Commission to farm out all such wastes, Quod absque injuria alterius fieri potest. And in anno 15. asserted a great part of his Woods for tent, and disforrested in most Counties of England for a sum of mony they gave him.

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And it was not the least of charitable Rot. claus. an. thrift in the King, to reduce much of his 7. Edw. 2. waste to habitation of Christians, especially the remote Forrests, which would increase many thousand Families for his service, and bring many thousand pounds to his Costers.

But in the carriage of this business there must be much caution to prevent commotion, for in them there are many that have right of common sans nombre. And the resolution in agreement with them must be sudden, and consident, for multitudes are jealous and inconstant. And the instruments to effect this, must be such as are Neighbours, interested and popular, not strangers; And the first demise to the inhabitants, and at under and easie values.

Kings raife money, and improve the Revenues although their Crown, by manuring of Land.

Thus did Hen. 3. anno 13. in removing Rot. clauf. an. out of most of his Parks, as Gillingham, 13. Hen. 3.

bar all mens Cattle pro bobus, pro Lardaria

Regis in Parcis prædictis impinguendis.

N 3 · And

Rot. fin. 2. 0 3. Edw. 1.

And Edw. I. commanded all the Esche ators in England. Excolere, seminare & appropriare ad maximum Regis proficuum omnes terras, que regi & corone sue devenrint per mortem aliquorum, vacationem Epifcopatuum, &cc.

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I Ings raise money and improve the Revenues of their Crown,

(1. Trading themselves. 2. Licencing others to \ Lawful on trade in Commodities, unlawful. 3. Improving Cu-Stoms.

1. Trading themselves.

Rot Vascon. 22. Edw. I.

Thus did Edw. 1. anno 22. seise into his hands all the Wools in the Kingdom as the Merchants were lading themin the Ports, giving them fecurity of payment at a long day, and a short price, and then transporting them to his own best and readiest sale.

Rot. Almaig. 12. Edw. 3.

Thus did Edm. 3. anno 12. with all the Tin.

Act. Concil.

And Hen. 6. anno 20. by adviced an. 20. Hen. 6. his Council took up by way of purveyance great store of Grain, and transported it into Gascoigne, where by reason of a dearth, the price was extream. In anno 31. he arrested all the Tin in Southampton, and fold it to his own prefent use: and in the year following using the advantage of the Statute, which bound bound all men to trade the staple Commodities to no other place but Callice, vented himself many Sacks of Wool to other Ports of better advantage.

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And the late Queen anno 1567.causeth Warrant. subby warrant of Privy Seal a great propor-privat. sigik. tion of Beer to be purveyed, transported an. 9. Eliz. and sold to her use beyond the Seas.

K Ings raise money and improve the Revenue of their Crown

By licencing others to Lawful trade Commodities. Unlawful.

1. Lawfully, but solely.

Thus did Hen. 6. by approbation of Rot. Parl. an. Parliament, with all the trade of Allome, 29. Hen. 6. n. for two years granted to the Merchants 15. of Southampton for 8000 l. And again for the like sum to those of Genoa.

2. Unlawful or Prohibited.

Thus did many of the Kings, (after Rot. clauf. an. fuch time as the heavy burthen of imposition began in the miserable necessity Rot. Parl. 15. of Hen. 3. called then by no better name than Maltolt) and continued until the 15. year of Rich. 2. by divers intermissions, for then I find the last petition of many in Parliament against it, was altogether taken away. For when Rich. 2. and his Successors found the Revenue lessend, by the importunate cry of their People, whereby impositions were laid N 4 aside,

aside, they began to advise another supply out of the unbounded power of supposed prerogative, and finding a greedy desire of one Merchant to prevent another of his market (restrained by that Act or Statute, which tyed them to one time, and to one Port Callice, for all staple commodities) they used to sell Licences with a clause of Non obstante of any statute, whereby they dispensed with multitudes to trade with what commodities, and to what places they would.

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Ex billa fignat. an. 20. Rich. 2. To the Merchants of Newcastle Rich.2, gave leave to carry wool-fells, &c. to any other Port besides Callice, upon condition that they should pay for them Custom and Subsidie-according Le sage discretion de vouz ou de vostre sage Council.

To divers Citizens of London Hen. 4, in the like fort dispenseth for great quantity of Tin for seven years, paying 400 l. yearly above the usual Custom.

Ex petit. an. 3. Hen. 6.

Ex act. Concil.

Hen. 6. annis 6.21. 30. reneweth to the Town of Newcastle the same licence they had anno 20. Rich. 2. and granteth 600. sacks of Wool to Benedict Benoni Merchant of Florence, with non obstante any statute or restraint: In this year such Licences were so frequent, that the Town of Callice complained in Parliament of their decay thereby; yet without relief as it seemeth. For the same King anno 36. giveth leave to Lawrence Barbarico to transport from London to Cicester.

Cicefter 12000 facks of Wool to what Ports he lift: And Edward 4. anno 10. Ex billa origiborrowing 12000l. of divers Merchants, nal. an. 10. permitteth them non obstante any Law to Edw.4. carry any staple Commodity to the Straits of Morocco until they were fatisfied their fum.

Henry the 7. raiseth much money, by giving leave to many Merchants to trade Ex lib. comp. inward and outward Commodities pro- inter Hen. 7. hibited, as to Alonfo de Burgues great proportions of Ode Anno 6. and to a multinude of others all kind of grain and other forbidden things, as in annis 20,21,22.

& Dudley.

I Ings raife money and improve the Revenues of the Crown, by improving Customs.

> (1. Farming out of Ships. By 2. Raifing the book of Rates. 13. Farming the Customs.

1. Farming out of Ships.

To the Merchants, and taking fecurity of them, either to bring in or carry out yearly asmuch Commodities, as shall yield the King in Customs the sum agreed on, or elfe to make it up out of their own money.

Thus did Hen. 7. many years, not on- Ex lib. Hen. 7. ly with his Ships, but with divers stocks

of money.

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2. Raifing

2. Raifing the book of Rates.

Rot. Almaign. 3. Edw.3.Rot. clauf. 29. Ed. 1. Extract. Bruxelles.

This was in some fort done Confense Mercatorum by Edw. 1. and Edw. 3. and again in H. 8. time, of which the house of Burgundy complained, as against the treaty of entercourse; and of late so firetched, as it is feared it will prove the overthrow of Trade: neither do I find

this course at any other time.

As a branch of this, may aptly fall out the benefit Princes made by a Prerogative power of imposing inward and outward upon Comodities, over and above the antient Custom of Subsidy. The first that used this course after the Statute was fetled, from a King of voluntary government after the Conquest (when as Kings ruled more by the edg of the Sword than by rule of Law) was Henry 2. about the entrance of his Reign; but finding it to be an apparent overthrow of Commerce and Trade, and against the great Charter; made Proclamation anno 16. in all Ports of England that all Merchants might come facienda rectas & debitas consuetudines, nec sibi timeant de malis toltis,

Magna Charta 30.

Dors. clau. an. 16.Hen.3.n.30.

Statut. an. 25. Edw. I.

Some impositions being laid by Edm. 1. he in anno 25. taketh them away, with promise that neither he nor his Successors fhould do any fuch thing without affent of the Parliament, granting in anno 31. to the Merchants many immunities, as

for it had no better name than Maletolts.

Rot. Parl. 31. Edw. I. cap. I. Ø 2,

release

release of prisage, for which they requite him with some increase of Customs, but not as imposed by his own power: For he in anno 34. declareth that no tallage or aid should be levied without the affent of Parliament, nor nothing to be taken of Woolls by colour of Maletolt.

In Edward 2. time, it appeareth that levying of new Customs and raising of old, was the destruction of Traffick, and therefore repealeth all Maletolts, only in Rot. clauf. an. anno 11, 12. taketh by way of Lone, and 11. Edw. 2. with leave of the Merchants, fome former increase upon Woolls, ascribing nothing to any supreme power to impose.

The like did Edm. the 3. anno 1. con- Rot. fin. 1. Ed. firming in anno 2. the great Charter for 3. Statute 2. free Traffick: but having about anno quinto granted certain Commissions for a new kind of raising tallage, the People 3. cap. 1. complained the year following, whereupon he repealed the faid Commissions, and promifeth never to affels any, but as in time of his Ancestors. After in an. 11. by reason of a Statute then made (restraining all men upon pain of death for transporting any Wolls without licence from the King and Council) Edward the 3. made great advantage by felling of Dispensations to that Law, and grounded upon it many impositions; but it Ro. Almaign. grew fo heavy upon the People, that their 12. Edw. 3. discontentments so far increased, that dors, the King was enforced to cause the Arch-

Edw. 3. cap. 9. Rot.Parl.6. Ed. 3. Stat. I I. Ed.

memb. 22. in-

Bilhop

Bishop of Canterbury to perswade them

to patience by his Godly exhortations, yet notwithstanding he continued by gentle intermissions the advantage he had by that late undecimo, taking an improvement of Custom for opening the passage that thereby was shut in anno 13. until the same year the State made purchase of their former freedom, and discharge of the Maletolt, by granting the tenth sheaf and sleece, &c.

Stat. 13. Ed.3. Rot. Parl. 13. Edw. 3. Stat. 14. Edw. 3.

> And thus it continued all his Reign, being a time of great necessity and expence by reason of his Wars, he sometimes taking an advantage either to raise an imposition, or else to gain aid from the People in discharge thereof, they continually urging the injury in barring them their birth-right: And the King on the other fide the greatness of his own occasions, and it may be gathered by Record, that thus it held on until the 15 Richard 2. in which year is the last petition against impositions, generally grounded in likelihood from the Kings power in restraining or permitting trade all the time after; though licences with non obstante were ordinary, yet were they to private persons and for particular proportion of Commodities, whereby the Kings succeeding raised no less benefit than by fale of any general permiffion. To this of Imposition I may add the rule I find anno 12. Henry 6. made in Council

Licence granted by Henry 4. Henry 3. Henry 6. to many Merchants with non obstante any Statute.

Ordinat. Concil. anno 12. Henry 6. Council, that the value of all goods for the payment of Subsidy, shall be rated of Commodities domestick as they may be sold between Merchant and Merchant: And if Foreign, then so as it shall appear upon Oath of the Merchant or his Factor, they stood them in at the first; and the general Maxim which limits all regal Merchants. advantage upon trade of Merchants, is, ut Causa honesta sit & necessario, ratio facilis, tempus idoneum.

3. Farming out of Customs.

So did Edward 3. with the new and clau. anno. 5. old Customs at London for 1000 Marks Edw. 3. Orimonthly to be paid unto the Wardrobe. ginal. 17. Ed. The like he did anno 17.

3. Rot. 2.

Richard 2. anno 20. letteth out for term of life Subfidy of Cloth in divers Countries.

And Edward 4. anno 1. the Subsidy

and usage of Cloth.

Thus did Henry 8. with his Customs, and fince his time, the late Queen, and our now Soveraign Master; and it was so then in use in the best governed State Rome, which let out portions and decim's to the Publicans.

K Ings raise money, and improve the Revenues of the Crown.

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Liberties. Penalties CI. Tempo-By Rega- Iral, as for of Laws, Letters of lities; Or, 2. Mixt. Favour.

Liberties.

In granting, reftraining or renewing It is a course usual, that Kings have raised in money by calling in queftion the Charters and Liberties of Corporations, Leets, Free-Warrens, and other Royalties.

Ex Rad. Cog-Chal.

Thus did Rich. 1. proclaiming, Quod omnes charte & confirmationes, que prioris sigilli impressione roboraverint, irrite forent nisi posteriori sigillo roborentur.

And Henry 3. anno 10. enjoyned all qui suis volebant Libertatibus gaudere, ut innovarent chartas suas de novo Regis sigillo,

getting money thereby.

Rot. Ragman. an. 7. Edw. 7. Rot. Quo warranto 8.Ed.3.

Edward 1. by divers Commissions with Articles (called Articuli de Ragman) annexed to them, called in question about anno 70. all the Liberties and Freedoms of England; Gilbert de Thorneton his Attorney putting information by Quo warranto against all persons, as well bodies Politick as others; whereby they were inforced anew to renew their Charters. and Fines for their Liberties.

Rot. Warran-

The like was in anno 13. Edw. 3. in 13. Edw. 3. whose time an.9. all clauses of allowances by Charter of Amerciaments, Fines, &c.

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imposed by the Kings Ministers upon any of the Tenants of other men were adjudged void, and the penalties made payable to the Kings Officers, unless they made a new purchase of their Liberties. And this was one of the usualest and eafiest means to raise money from the people; because it lighteth only upon the best abilities. And if there were now but 20 1. taken of every Corporation; of every person that holdeth by Charter his Liberties 5 1. for renewing them: and of every one that claimeth by prescription 101. for purchase of a Charter, all which would be easie and acceptable, it would amount to above 100000 l.

For penal Laws that have been some times but with ill fuccess wrought upon,

When Richard 2. anno 22, began this Instructio oricourse, appointing in all his Commissi-ginal. 22. ons and instructions, Bushey only to be of Rich. 2. the Querum for compounding with the Delinquents it wrought in the affection of his People such distaste, that it grew the death of the one, and deposition of the other.

No less fatal was the like to Empson: Process con. and there is no string will sooner jar Dudley an. 1. in the Common-wealth then this, if it be gennrally touched.

For letters of Favours.

Either for mitigation or dispatch of Justice.

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Of the first fort there be many sound in Hen. 6. and Edw. 4. time, sometimes of protection, although by course of the Common Law none are warrantable but to such as are going in obsequium Regis, or ibidem moraturi, sometimes freeing men from Arrests by calling them up to appear before the Kings Council: Sometimes in causes highly criminal relieving the Prisoner, in commanding the Judges to make stay of all proceeding upon supposal of indirect practices until the King was better informed.

Of the second fort there are many in Henry 7. time, where the King hath taken money for writing to the Judges of

Affize his Letters of Favour.

For Offices.

Thus did King John with the Chancellor-ship, selling it for time of life to Gray for 5000 Marks: divers offices now in the gift of the Master of the Rolls were engaged to the Chancellor and Treasurer of England, as are to be found in Record of Henry 4 and Henry. and Henry 6. to be passed by warrant of the Kings hand, and upon some constration. And Henry 7. renewed this course, using Dudley as his instrument to compound with Suitors of those and any other places.

And by that Record we find the Chancellor, the Chief Justice, the Keepers of most of the Records, the Clerks of the

Affizes

Lib. aquitanc. inter Hen. 7. & Dudley. Affizes and Peace, the Masters of his Game and Parks, and what elfe carrying either profits or reputation, paid to the King fome proportion of money for their places. Neither is this different from the course of other States. For in France Lewis 12. called the Father of his Emilius in vita Country, did fo with all Offices not be- Lewis 12. ing of Judicature, which his Successors did not forbear. In Spain it is usual and Valque the Spanish Advocate defendeth Vas. cap. 40. ex the lawfulness of it: And Charls the fifth instructione prescribethit to his Son, as a rule in his Caroli 5. to Instruction, drawing his ground of Phil. 2. rason and conveniency from the exampleand practice of the See at Rome. The ike might be of all inferiour promotions that are or may be in the Kings gift, whether Ecclefiaftical or Temporal, if they were after the true value in profit indreputation listed into ranks, according to the several natures of their imployments respectively.

For Honours.

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And that either by Power legal or Ekation.

Of the first it is only in respect of Land, whereby every man is to fine when the ling thall require, that hath ability to emade a Knight, and is not; of this of there be plenty of Examples.

The other out of choice and Grace, as lugo de Putiaco Bpi of Durham, was by

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King Rich. I. created Earl of Northumber. land for a great firm of money: And I doubt not but many of these time would fet their ambition at as high price. And for his Majesty now to make a degree of honour hereditary, as Baro nets next under Barons, and grant the in tail, taking of every one 1,000 lin fine it would raife with eafe 1 00000 and by a judicious election be a mens to content those worthy persons in the Common-wealth, that by the conful admission of many Knights of the Bal held themselves all this time disgraced

For the Coin and Bullion.

By which, although fome Kings out a last shift, have seemed to relieve the felves, yet was it in truth full of de and distrust to the Common wealth being an affured token of a banknuk state: and to the Prince in conclusion For the Rem of most disadvantage. nues of the Crown being commonly in certain Rents, they must in true value, howfoever in verbal found, be abated to the proportion that the Money shall abased. And every man will rate be Commodity in Sale, not according to thing the accompt of pence or pounds, but to the the weight of pure Silver contained in our the currant money. As for example com That which was before the decrying of The Coin worth 5 shillings, the pound au weight

weight, will (if the allay be to the half) be held at ten thillings; and fo in every proportion respectively. For money is not meerly to be effeemed in respect of the Sculpture or Figure; but it must value in pecunia quantum in maffa: And Silver is a Commodity as other Wares, and therefore holdeth his estimation as they do according to the goodness. And the Lord Treasurer Burleigh in Anno 1461. when the current of State-Counmaffected an abasement of Coin, after mave deliberation advised the Queen from it, and never would give way to my fuch resolution in his time. But that benefit which truly the King might memake of Bullion than now he doth. in erect again Cambium Regio his own schange. An office as antient as before Hin. 3. and fo continued unto the midde of Hen. 8. the profit of it being now ignoffed among a few Gold-smiths, and would yield above 10000 l.a year, if it m were heedfully regarded, and then lug hould the King himself keep his Mint in ontinual work, and not frand at the de-1Fpc votion of others to Supply Bullion, and bould never want the materials, if two go things were observed: The one to perto the tall men bringing in Bullion, to trade commodities at an abated Custom.

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The other to abate the mighty inight

unnecessary Wares, that the outward

Ex Scacar.inter rememb.

trade might over-ballance the inward, which otherwise will (as it hath done) draw on this desperate consumption of the Common-wealth: Which anno 27, Edw. 3. was otherwise, for then the Exitus exceeded the Introitus by far, and in the last times of the late Queen, as in anno 1573. For at this time the unmea-Regis. 27. Ed.3. Surable use of luxurious Commodities was brought in (as Wines, Spices, Silk, and fine Linnens, &c.) for of the latter fort of above ten groats the Ell, there is above 360000 l. yearly spent, which is half the value of our cloaths transported, maketh the State to buy more than they do fell, whereas a good Father of a Family ought to be vendacem and not emacem. Besides the condition of our Paple is now such that the greater part neither get nor fave, which in a private house is an apparent argument of ruining, and must be no less in a Commonwealth. And it is observed generally, that hence the want of Bullion now is fuch, that there is not money in Specie fufficient to pay the lenders their principal, so that usury is paid for money upon supposition, and not really.

If then his Majesty shall be pleased by advice of his Council, to advantage himfelf any otherwise by coinage, it will be safer to do it upon a simple mettal, then by any implyant or better fute, which

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well governed States both modern and antient used: For Rome in her increase and greatest pitch of glory had their money are, argento, auro puto puro, and so have all the Monarchies absolute at this day in Christendom. And I believe it may be wrought to his Majesty of good value, and to the State of much ease, if it may be put in practice with discreet aution and constant resolution, for the danger only may be in the venting of the quantity, which may clog the state with useless money, or extension of the example, which may work in by degrees an embasement of Bullion.

The proportion that I would hold beneficial and safe, should be in the Mass, at first 120000 l. by which his Majesty should gain 10000 clearly: the increase annual 12000 l. in which his Majesty should gain 1000. And the limitation, that none be enforced to take any but in sums under 20 s. and then but the

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twentieth part proportionably.

Against this some may object, that it will either not advantage the King so much as is projected, either from the difficulty in venting, or facility in Counterseiting, or else prejudice the estate with a worthless money.

The benefit to the King will eafily fall out, if he restrain Retailers of victual and small Wares from using their own tokens, for in and about London, there

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are above 3000. that one with another cost yearly 5 l. apiece of leaden Tokens, whereof the tenth remaineth not to them at the years end, and when they renew their store, which amounteth to above 15000 l. And all the rest of this Realm cannot be inseriour to the City in proportion. And the form and figure may with an Engine so subtilly be milled, that the charge will prevent all

practice of false play.

For the prejudice fince London, which's not the 24. part of the People of the Kingdom, had in it found above 800000. by a late inquiry by order of the late Queen, and so falleth out to be 2.4. a person, in the intirestate it may no thing, either of loss by the first uttering being so easie, nor burthen any with too great a Mass at a time, since continual use will disperse so small a quantity into fo many hands. But on the otherfide will be to the meaner fort (except the Retailers that made as much advantage formerly of their own Tokens, as the King (hall now) of necessary use and benefit : For the buyers hereafter shall not be tyed to one Seller, and his bad Commodities, as they are still, when his Tokens, hereafter made currant by Authority, shall leave him the choice of any other Chapman; and to the Poor in this time of small charity, it will be of much relief; fince men are like to give a fara farthing Alms, that will not part with

a greater fum.

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Belides, it cannot but prevent much waste of Silver, that is by the minting pence and half pence occasioned, there will be no cause hereafter to cut any bulloin into proportion so apt for loss: what that hath been may be conjectured, if we mark but of the great quantities from the penny downward since Hen. 8. time stamped, how sew remain; whereas of all the Goins from three pence upward which are manual, plenty pass still in daily payment.

Regalities mixt.

As for restitution of the temporalities of Abbots and Bishops.

For which Hen.7. received great sums.

Corrodies in Carbediral Churches.

And having in every Cathedral and Collegiate Church, as incident to his Crown a Corrodary, made money of it at the highest rate he could.

Vacancy of Bishopricks.

The benefit at the vacancy of any Bishop some Kings have used to their best advantage, making a circular remove of as many as in reputation and profit was inferiour to the place void.

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Concurrent Turifdiction as the Pope bad in former times.

Besides, there are two of no mean

commodity.

The one is grounded upon a concurrent Jurisdiction with every Ordinary in the Diocess, which the King by having the power Papal in that point invested in him by Act of Parliament, may exercise by his Commission, or otherwise remit to the Ordinary for some valuable respect.

Ex composit. original. inter card. Wolfey, & Archiep. Hen. 8.

Thus did Cardinal Wolfey with War. bam the Arch-bishop, and all other the Bishops of the Kingdom, after he had cant. dated 14. got his Legative power. And this if it were put in practice would draw to the King 20000 l. in his Coffers.

Tenths of the Church-Lands now in the

Laity.

The other is the short account yielded the King of fuch Ecclefiaftical tenths and duties, as were often or Annually paid unto the Pope in former times, and now by Statute invested in the Crown: for in former times the See of Rome received them not, as only out of the meer Spiritualities, but also from out of all the Temporalities of Spiritual persons; which Land being now divided from the Church into the hands of the Laity; yet ought they to pay this duty, fince they were fettled in the Crown by a former Law, and no subsequent ever hath discharged them. AN

ANSWER

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TO CERTAIN

ARGUMENTS

RAISED FROM

Supposed Antiquity

And urged by fome MEMBERS of the Lower
House of

PARLIAMENT:

To prove that

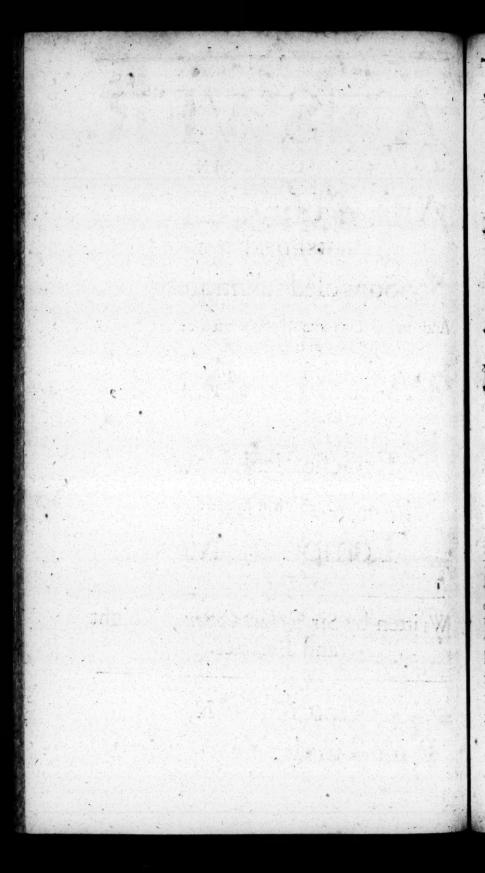
Ecclefiastical Laws.

Ought to be Enacted

Temporal Men.

Written by Sir Robert Cotten, Knight and Baronet.

LONDON, Printed in the Year, 1679.



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ANSWER TO CERTAIN ARGUMENTS

Supposed Antiquity,

And urged by some Members of the Lower House of

PARLIAMENT,

To prove that

Ecclefiaftical Laws

Ought to be Enacted by

Temporal Men.



Hat, besides self-regard, or siding faction, hath been the main reason of the lower Lay-bouse labour in Parliament, to deal with

Laws of the Church, the milder Members have yielded a Right which they would maintain by former precedents, raising the same from

- 1. Primitive use.
- 2. Middle practice.
- 3.Uninterrupted continuance. Pro-

3. Reasons out of Precedent.

titutions. 2. Saxon Laws. 3. Acts in Parliament.

1. Imperial con- Professing the same by the Laws of titutions.

1. The Roman Empire.

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. The Saxon Kings.

3. The English Parliaments so to do. Whince fince it may raise a prejudice to the Church's peace, or to the Soveraign's power, unopposed; I will make way (in a word or two) to the better answer of some other Pen, What they fay is not to be denied, that in course of civil Laws under the Christian Emperours, there be often constitutions Ecclefiaftical; and in the Councils of the Church (frequent) the Sovereign's power, and fometimes the presence of lay-Ministers; yet may their affertion admit to the first this answer of Justinian , Principes, Sapientes , Episcoporum monita, pro fide & Religione Christiana, Leges Synodicis Canonibus conformes edidere, recte judicantes, Sacendotum Sanctiones merito Majestatis Regie nutu roborari. So that those decrees of the Civil Laws will prove but confirmatives of former Canons, as may be gathered by that of Valentinian and Martian, Emperours, who wrote unto Paladius, their Præfectus Pratorii, that all constitutions that were against the Canon of the Church should stand void. And to the second, that their presence was to dignifie, and not

to dispute; the direction proveth, that the Emperor Theodosius gave to Candi.

Tripartita Hi-

Aoria.

Fistinian.

Distinct. 196.1.

dianus an Earl, by him to the Epbesian

Counsel sent ; Non ut Questiones seu Expositiones communicaret cum sit illicitum, quia non fit in ordine Sanctissimorum Episcoporum, Ecclesiasticis tractatibus intermisceri. And Valentinian the elder, though Petitioned by the Bishops to be present at their Synod, faid, Sibi, qui unns è Laico- Nicep. lib. 11. rum numero effet, non licere bujusmodi negotins fe interponere. And by the Council con-5 carth. of Carth. and Affrican, likewise it ap. cil. ? Affrica peared, that even Princes would intermeddle with these matters; but Sapins rogati ab Episcopis. And the Emperor Gratian taught, as Zozimus saith, Om-Zozimus. nes Laicos nibil potestatis in res Ecclesiasticas posse sibi vindicare. And the former Emperor Enacted, In causa Ecclesiastici alicujus ordinis eum judicare debere, qui nec manere impar est, nec jure dissimilis, Sacerdotes de Sacerdotibus judicare. According Ambrof 1.5. to that faying of Constantine the Great; Ep. 32. Vos enim a Deo nobis dati estis Dii, & con-Ruffinus Ecclef. veniens non est ut homo judicet Deos. Thus hist. 1. 1. then stood the practice of the primitive Church; which when it was in those times otherwise, as under Constantius the Arrian, Athanafius faith of him; He- Athan. Epift. ad reseos veneno imbutos milites. Sicarios, Eu-solit. vitam. anuchos Comites, faciebat Sacerd. Judices, gent. & cogebat umbratiles Synodos, quibus ipfe cum monstris illis præsideret. Whereas otherwise the Emperors, even in the height of Pagan Greatness, ascribed to Dionysius their Pontifices and Sacerdotes in Com-Halicarn. mon

mon Right, Propter Religionem comitia babere propria, and that Stabili Sentensia ratum erat, quod tres Pontifices communi decreto fratuiffent.

The second Objection. Ecclesiastical Laws enacted in Parliament.

Saxon Laws.

Leges Inc. Note how

To the second, as it is in the former true, that many Canons in the Church are interlaced with the Commonwealths, although the Saxon Laws, and that the establishment should be by Parliament, which they infer out of the Frontispian, of Inas Statutes in these words, Ego Ine Rex, ex tractatione Episcoporum, & omnium Aldermannorum meorum, & Seniorum Sapientum Regni mei, & confirmatione Populi mei; do ordain, Ge. Yet may receive this answer. First, that the Commons did but confirm and not dispute; which to this day is in their fummons comprized only ad consuetudinem. But whosoever shall collate the transcript copy with the original, Textus Roffensis called Textus Roffensis, will find these ordinances, not called Leges but Synodalia, and almost all by the King and Church-men onely made. Neither was it new in this Isle that Priests directed alone the government, when as the best Record of our eldest memory faith, that the Druides, (a religious Pagan order) not only divinis interfunt, Religi-

Religiones interpretantur, but de omnibus (as Cafar faith) controversiis publicis privatisque constituent, sive de hæreditamento, five de finibus, & premia & panas constituunt. And if any, five privatus, aut populus decreto eorum non steterit, sacrificiis interdicunt. And this excommunication amongst them, was pana gravissima. Neither did the times of Christianity here bereave the Church of all fuch will. For in the Saxon time they intermedled in the framing of the Temporal Laws, and ought, as appeareth by an Ordinance of that time de Officiis Episcopi: Saxonum. Cum seculi judicibus interesse ne permittent fi possint, ut illine aliqua pravitatum germina pullulaverint. And furely, fince Eulogium. these times until of late, the inferiour All the clergy Ministers of the Church, as well as Bi- members of Parshops, had suffrage in Parliament. For by Record. John de Rupesciffa (a story as old as King John's time) faith, Anno 1210. Convocatum eft Parliamentum Londonia. Prafidente Archiepiscopo cum toto Clero, & Rot. Parl. 18. tota fecta Laicali. And in the 8. of Edw. Edw. 3. the 3. the Members of Parliament defective in their appearance, the King chargeth the Arch-bishop to punish the defaults of the Clergy, as he would the like touching the Lords and Commons. And the third of Richard the Second, Ret. Parl. an. against a Petition in Parliament contra- 3. Rich, 2, dicting Provisions, the Prelates and whole Clergy make their protestations; And

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Rot. Parl. an. 4. Rich. 2.

Rot. Parl. an.

And to a demand of the Lay-Commons for the King's aid the year following, the whole Clergy answered, that they used not to grant any but of their free will. And in the eleventh of the same

11. Ri. 2, 11.9. King, the Arch-bishop of Canterbury made openly in Parliament a solemn protestation for himself, and the whole Clergy of his Province, entered by word; the effect whereof was, That albeit they might lawfully be present in all Parliaments, yet for that in that Parliament matters of treason were to be intreated of, whereas by the Canon Law they ought not to be present, they therefore absented themselves, saving their liberties therein otherwise.

Rot. Parl. an. 21. Rich. 2. n. 9. 6 10.

And in the 21. of Richard the 2. for that divers judgments were heretofore undone; for that the Clergy were not present: the Commons prayed the King, that the Clergy would appoint fome to be their common Proctor, with fufficient authority thereunto. Bishops and Clergy therefore being severally examined, appointed Sir Thomas Piercytheir Proctor to affent, as by their Instruments appeareth.

Rot. Parl an.

And the fame year, upon the device 21. Rich. 2. n. of Sir Thomas Buffey most of the Bishops and Lords were fworn before the King again, upon the Crofs of Canterbury, to repeal nothing in this year enacted. So did fundry the Protectors of the Clergy,

and most of the Commons, by holding up one of their hands, affirmed that

they the same would do.

In the judgment of the Duke of Nor- 2. Ric. 2. 1.58: folk, and Earl of Warwick the same year, the name and affent of the Procuhator of the Clergy alledged. And in 1. Hen. 4. the first of Henry 4. the Bishop of Assaph, for Arch-bishop and Bishops; the Abbot of Glaffenbury, for all Religious Perfons, the Earl of Gloucester, for Dukes and Earls; the Lord of Barkley, for Barons and Baronets; Sir Thomas Irpingham Chamberlain, for Batchelors and Commons of the South; Sir Thomas Gray, for Batchelors and Commons of the North; Sir William Thirming, and John Mekham Justices, for the whole Estates, came to the Tower to King Richard, to whom Sir William Thirming, for and in the name of them all, pronounced the sentence of deposition, and the words or refignation of homage and loyalty.

And when it was enacted anno 6. Ret. Parl. an. Henry 6. by the King, Lords Temporal 6. Hen. 6. 11,27: and Commons, that no man should contract or marry himself to any Queen of England, without the special licence and affent of the King, on pain to lose all his Goods and Lands; The Bishops and all the Clergy to this Bill affented, so far as it was not against the Law of God. And thus far for answer to the second part:

P The

The third Reason. Ecclefiastical Laws E. nacted in Parliament.

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William Malmesbury.

Lib. Ecclefiæ Cantuar:

Vita Hen. 2.

The last, which they granted from Precedents, Parliaments fince the Conquest, they infer out of the Phrase, and out of the practice; The first by these words; Rex Wintonia celebravit magnum Concilium coram Episcopis , Comitibus, o Baronibus, mistaking the word, as intending a Provincial Synod, whereas it was in those days equal and usual for their Parliament, that French Phrase never having admission in that sence here until the time of Henry 2. and then but That great affembly being formerly instilled Magnum Confilium; and in P until of late often enjoyed the same And this is evident out of the ther words of Benedicius Abbas, in the life he Reco wrote of the 2. Henry; Circa festim diffe Sancii Pauli, venit Dominus Rex usque from Northampton, & magnum ibi celebravit from Confilium de Statutis Regni sui coram E dua piscopis, Comitibus, Baronibus terræ sue, o mei per Consilium Militum & hominum suorum of th Here the intent manifesteth the nature to ac of that affembly, and the fuller, in that Cane the same Author in the same year, saith, puni that Richardus Cantuar. Archiepiscopus, when and Rogerus Eboracensis cum Suffraganin Clerg suis congregatis apud Westmonasterium in ione Capella Monachorum infirmiorum tenuerum ord ConfiConfilium; or their convocation, which had been needless if in their first, they might have done their Church-affairs.

Here might I enter into a large and inst discourse, as well of the Authority as Antiquity of their Convocation or 4 Synod Provincial, no less antient, as Beda mentioneth, than in the year 686. when Austin adjutorio Regis, &c. affembled in Council the Brittain Bishops; from which, unto this day, there is fucit effive Record of Councils or Convo-Provincial ations, less interrupted than of Parlia- Constitutions 10 ment.

Beda:

Practice.

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Now touching our practice to ordain me in Parliaments Laws Ecclefiaftical, eithe ther meer or mixt, although it be by he Record evident, yet must it admit this in difference: First, that it sprung not fom our dispute or desire, but solely Rot. Parlo from the Petitions of the Church, as E wal is in all the Rolls of Parliament, o meiving their distinct Title from those of the Commons. And this they did une badd Seculare Brachium to their former hat Canons, too weak to reach to corporal ith unishments; as in the fifth of Rich. 2. when to suppress the Schisms, the ined Clergy became in Parliament the Petiin infoners to the Kings Laity; where these Claus. 5. Rich. 23 run fords of their affiltance are, excluding

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the Common's from any power of advice: Habita prius bona & matura deliberatione de communi Consilio ipsius Archiepiscopi, Suffraganeorum suorum, aliorumque Clericorum, Super quo idem Archiepiscopus supplicavit, ut pro debita castigatione illorum qui conclusiones Schismaticas predicare voluerint, animo obstinato dignaremm apponere brachium Regie potestatis eidem. chara antiqua And this aid was in order in the Conquerors time; who by edict commanded that every Marshal, Episcopo & Do

B. B.

Ambrofius.

Concil. 11. Toletan.

faceret rectum secundum Canones & Episcopales leges. Which if he doth not, after excommunication, Fortitudo b Fustitia Regis adhibeatur. And thise ven in the Primitive Church, was thought convenient: because as Saint Ambrose saith, for the like intent, to the Emperor Valentinian; Non tanta vires sermo meus habiturus est pro Trinitat bellum gerens, quantum edicium tum Hence it is that at this day the King's Authority is annexed ever to the Convocation; as in the antient Church were the like degrees of Kins; as those of Eruigius ratifying the twelfth Cour cil of Toledo. Nemo illiciator vel con temptor vigorem his Institutionibus subtra tha hat, sed generaliter per cunctas Regni noti provincias bæc Canonum instituta nofine gloriæ temporibus acta, & autoritatis debit fastigia præpollebunt, & irrevocabili judi ciorum exercitio prout constituta sunt ison omnibu peti ne

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omnibus Regni nostri Provinciis celebres babebuntur. Si quis autem bæc instituta contemnat, contemptor se noverit damnari senuntia; id est, ut juxta voluntatem nostræ iloria, & excommunicatas à nostro cœtu refliat; & insuper decimam partem facultain sue fisci partibus sociandam, amittat. But that the Church-laws ever moved from the Lay-members, I take it as far from Precedent, as it is beside the nature of their Commission: The Bishops and Clergy being only called in the Writ to that service, the word being, to come in Ad consentiaffile & delectione, ad declarandum Consili- endum. Writ of 0 mo avisamentum, & ad consentiendum claus. an. 22. i que tunc de avisamento & assensu Cleri Rich. 2. m. 7. was int ufri (and not the Commons) contigemaffirmari. But if any shall object unto to me, that many Laws, as that of the Suntas premacy in Hen. 8. time, had first the ground in Parliament; it is manifested, JUN. wthe dates of their Acts in convocati- Archivis Ar-1g's ons, that they all had properly in that chiepis. onpace the first original. And that this hole was the use of old, nothing will leave it oclear, as to observe the fruitless success of the Laity, in all their endeavours to thablish Ecclesiastical Laws; And this I not will manifest by the Kings answer out of Record, fo far as the Rolls of Parliament lebit will admit me, successively. Until the jud 11 of Edward the first, there is no Re- Rot. Parl. 18. ord extant; but in that the Commons Edw. 1. niba petition to the King, that a Law may be

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Summons, Rot.

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Vexation by Ordinaries made against Usurers; The King gave answer, that it must be remedied, coram And when they defired re-Ordinariis. medy, de multimodis injustis vexationibus eis factis per Officiales & abios ministros E. clesia; The King replied, Cancellaring emendat in temporalibus; Archiepiscopus faciat in spiritualibus. From hence there is a lack of Record near to the 8 of El ward 3. In which Parliament the Commons defire an Act to restrain the Clagy in their trivial citations; whereund they received from the King but this an fwer only; That the King will charge the Bishops to see it remedied. And the first of Richard the 2. preferring the like petition against corruption of Ordinaries, to do according to the Laws of the And in the fifth of the Holy Church. fame King, they complain against abus in Ecclesiastical Courts. Respons. The

Rot. Parl. 8. Edm. 3.

Citations,

Rot. Parl. an.

1. Rich. 2.
Pecuniary
pains.

5 Rich. 2.
Ecclefiaftical
Courts.

Tythes.

17. Rich. 2 n. 43.

Learned Ministry. And in the 15 year, when they required an Act to declare the age of the tithable Wood; they had for answer, The King would move the Bishops for order between this and the next Parliament.

King will charge the Clergy to amen

the same.

And in the 17 of Rich. 2. when the petitioned for a residing learned Ministry, so as the Flock for want might no perish; they had replied, That the King willeth the Bishops to whom that Office belongeth, to do their duties.

Henr

Henry the 4. in his fecond year, desi- Rot. Parl. an.2. red by the Lords and Commons to paci- Hen. 4. n. 44. he the Schism of the Church; Answereth, he will charge the Bishops to consider the same. And in his fourth year, being importuned for an Act for refiden- 4. Hen. 4. cof Ministers; replyed Le Roy command on Prelats & perentre cy ils en purvoient de remedie. And in the eleventh of the ame King, to the like petition; Respons. Cefte matiere appartient a St. Eglise & re- 11. Hen. 4. mede en la darraine Convocation.

In Parliament under the 5 Henry and Rot. Par. an. 1. his first year, the King answereth the Hen.5. Commons Petition, against oppressing Ordinaries; If the Bishops do not re-

dress the same, the King will.

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And in Anno 3. Henry 6. to a Petition Rot. Parl. an.3. that Non-Residents should forfeit the Hen. 6. profit of their living; gave answer, that he had delivered the Bill to my Lord of Canterbury, and semblably to my Lord of Tork; charging them to purvey means of remedy.

And in the year following, to a Peti- Rot. Parl. an. tion that Patrons may present upon 4. Hen. I.

Non-Residency; Respons. There is remedy fufficient in the Law spiritual.

Since then it is plain by these rehearin led answers, that from the Conquest, they have received but weak admittance: in And by the edict of the first King Willi- Charte Astifid am in these words, a sharp restraint; que B.B. Defendo & mea authoritate interdico, ne

P 4 ullus Leges Saxon.

pum pertinent se intromittat. And that the Saxon Synodals, are rather Canon-Laws, than Lay-mens Acts. And the practice of the primitive Church, if well understood, but a weak prop to their desire. It may not seem distastful from the King (walking in the Steps of his Ancestors, Kings of this Land) to return (as formerly) the Commons desires to their proper place, the Church-mans care, And to conclude this point in all Parliaments, as Martian the Emperor did the Chalcedon Council; Cessat jam prosant

Concil. Chalc.

contentio; nam vere impius & sacrilegus
est, qui post tot sacerdotum sententias, opinioni sua aliquid tractandum reliquit. And
with the Letter of Gods Law; Qui superbierit nolens obedire sacerdotis imperiu,
ex decreto sudicis morietur homo.

Levit, 14.

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ARGUMENT Made by the

COMMAND
Of the House of

COMMONS,

(Out of the Acts of Parliament, and Authority of Law expounding the same) at a

CONFERENCE

LORDS,

Concerning the

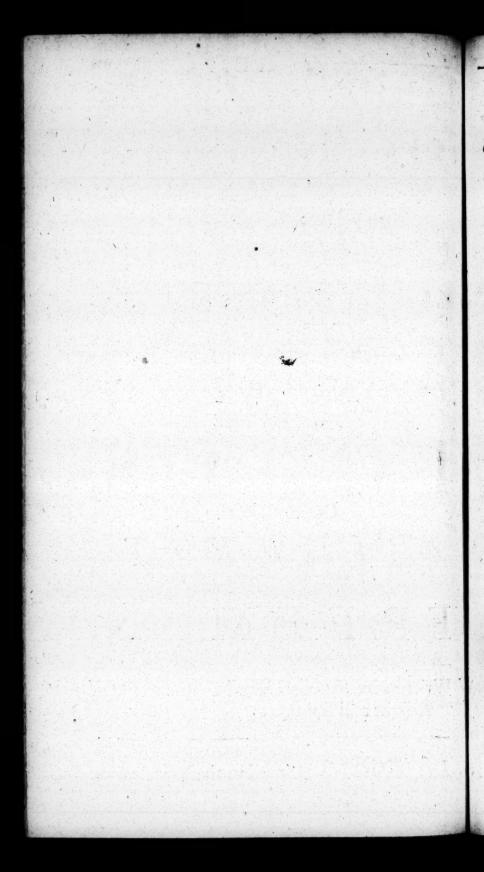
 $LIBERT\Upsilon$

Of the Person of every

FREEMAN.

Written by Sir ROBERT COTTON
Knight and Baronet.

LONDON: Printed in the Year, 1679.





ARGUMENT

Made by the

COMMAND

Of the House of

COMMONS

(Out of the Acts of Parliament, and Authority of Law, expounding the fame) at a Conference with the

LORDS,

Concerning the Liberty of the person of every

FREEMMN.

My Lords ,



PON the occasions delilivered by the Gentletlemen, your Lordships have heard, the Commons have taken into their serious conside-

ration the matter of the personal liberty: and after long debate thereof on divers days, as well by folemn Arguments as fingle propositions of doubts and anfwers, to the end no scruples might remain in any mans breast unsatisfied; They have upon a full fearch and clear understanding of all things pertinent to the question, unanimously declared, That no Freeman ought to be committed, or detained in Prison, or otherwise restrained by the command of the King, or the Privy Council, or any other, unless some cause of the commitment, deteinor, or restraint be expressed, for which by Law he ought to be committed, detained or restrained: And they have sent me with other of their Members to represent unto your Lordships the true grounds of fuch their resolution, and have charged me particularly (leaving the reasons of Law and Precedents for others) to give your Lordships satisfaction, that this Liberty is established and confirmed by the whole State, the King, the Lords Spiritual and Temporal, and the Commons, by feveral Acts of Parliament, the authority whereof is so great that it can receive no answer, save by interpretation or repeal by future Statutes: And those that I shall mind your Lordships of, are so direct to the point, that they can bear no other exposition at all; and fure I am, they are still in force.

The first of them is the grand Charter of the Liberties of England; first gran-

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ted 17. Johannis Regis, and revived 9 Hen. 3. and fince confirmed in Parliament above 30. times. The words are these, cap. 29. Nullus liber homi capiatur vel imprisonetur, aut disseisetur de libero tenemento suo, vel Libertatibus, vel liberis consuetudinibus suis, aut utlagetur, aut exuletur, aut aliquo modo destruatur: nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum, vel per legem terra. The words Nullus liber homo, &c. are express enough. it is remarkable that Matthew Paris (an Author of special credit) doth observe fol. 432. that the Charter 9. Hen. 3. was the very same as that of the 17. of King John (in nullo dissimilis are his words) and that of King John he setteth down verbatim, fol. 342. And there the words are directly, Nec eum in carcerom mittemus: and fuch a corruption as is now in the point might eafily happen betwixt 9. Hen. 3. and 28. Edm. 1. when this Charter was first exemplified: but certainly, there is sufficient left in that which is extant to decide this question: for the words are, that no Freeman shall be taken or imprisoned but by the lawful judgment of his Peers; (which is by Jury; Peers for Peers, ordinary Jurys for other, who are their Peers) or by the Law of the Land: Which Law of the Land must of necessity be understood to be of this potion, to be by due

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process of the Law; and not the Law of the land generally : otherwise it would comprehend Bond-men (whom we call Villains) who are excluded by the word liber: For the general Law of the Land doth allow their Lords to imprison them at their pleasure without cause, wherein they only differ from the Freeman, in respect of their persons, who cannot be imprisoned without a cause. And that this is the true understanding of these words, per legem terra, will more plainly appear by divers other Statutes that I shall use, which do expound the fame accordingly. And though the words of this grand Charter be spoken in the third person; yet they are not to be understood of fuits betwixt party and party; at least not of them alone, but even of the Kings suits against his Subjects, as will appear by the occasion of the getting of that Charter; which was by reason of the differences between those Kings and their People; and therefore properly to be applyed unto their power over them, and not to ordinary questions betwixt Subject and Subject.

Secondly, The words per legale judicium parium snorum immediately preceeding the other of per legem terræ, are meant of tryals at the Kings suit, and not at the prosecution of a Subject. And therefore if a Peer of the Realm be ar-

raigned

raigned at the Suit of the King upon an Indictment of murder, he shall be tryed by his Peers; that is by Nobles: but if he be appeached of murder by a Subject, his tryal shall be by an ordinary Jury of 12 Freeholders, as appeareth in 10. Edward 4.6.33. Hen. 8. Brooke title Tryals Stamf. pleas of the Crown, lib. 3. cap. 1. fol. 152. And in 10. Edw.4. it is faid, fuch is the meaning of Magna Charta. By the same reason therefore, as per judicium parium suorum extends to the Kings fuit; fo shall these words per legem terra. And in 8. Edw. 3. Rot. Parl. m. 7. there is a Petition, that a Writ under the privy Seal went to the Guardian of the Great Seal, to cause Lands to be feized into the Kings hands; by force of which there went a Writ out of the Chancery to the Escheator, to seize against the form of the grand Charter, that the King or his Ministers shall out no man of Free-hold without reasonable Judgment, and the Party was restored to his Land; which sheweth the Statute did extend to the King. There was no invasion upon this personal Liberty until the time of K. Edw.3. which was foon refented by the Subject: For in Edw. 3. cap. 9. it is ordained in these words: It is enacted, that no man from henceforth shall be attached by any accusation, nor fore-judged of Life or Limb, nor his Lands, Tenements, Goods

Goods nor Chattels seized into the Kings hands against the form of the great Charter and the Law of the Land. 25. Edm. 3. cap. 4. is more full; and doth expound the words of the grand Charter; and is thus: Whereas it is contained in the great Charter of the Franchises of England, that none shall be imprisoned, nor put out of his Freehold, nor of his Franchise nor free Custom, unless it be by the Law of the Land. It is accorded, affented and established, that from henceforth none shall be taken by Petition or Suggestion made to our Lord the King, or to his Council, unless it be by Indictment or Presentment of his good and lawful People of the fame Neighbourhood where fuch deeds be done, in due manner, or by process made by Writs Original at the common Law, nor that none be put out of his Franchises nor of his Freeholds, unless he be due brought in answer, and forejudged of the same by the course of the

Out of this Statute I observe, that what in Magna Charta and the Preamble of this Statute, is termed by the Law of the Land, is by the body of this act expounded, to be by Process made by Writ Original at the Common Laws which is a plain interpretation of the

Law; and if any thing be done against

the fame, it shall be redressed and holden

for none.

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words, Law of the Land, in the Grand Charter. And I note that this Law was made upon the Commitment of divers to the Tower, no man yet knoweth for what.

28. Edw. 3. cap. 3. is yet more direct; (this liberty being followed with fresh Suit by the Subject) where the words are not many, but very full and significant: That no man, of what Estate or condition soever he be, shal be put out of his Lands or Tenements, nor taken, nor imprisoned, nor disinherited, nor put to death, without he be brought in answer by due process of the Law. Here your Lordships see the usual words of the Law of the Land are rendered by due process of the Law.

36. Edw. 3. Rot. Parl. n. 9. atmongst the Petitions of the Commons, one of them (being translated into English out of French) is thus. First, that the great Charter, and the Charter of the Forrest, and the other Statutes made in his time, and in the time of his Progenitors, for the profit of him and his Communalty, be well and firmly kept, and put in due execution, without putting disturbance, or making arrest contrary to them, by special command, or in other manner.

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The Answer to the Petition, which makes it an Act of Parliament, is, Our lord the King, by the affent of the Prelates, Dukes, Earls, Barons, and the Com-

munalty hath ordained and established; that the said Charters and Statutes be held and put in execution according to the said Petition. It is observable that the Statutes were to be put in execution according to the said Petition? which is, that no Arrest should be made contrary to the Statutes, by special command. This concludes the question, and is of as great force as if it were Printed. For the Parliament-Roll is the true warrant of an Act, and many are omitted out of the Books that are extant.

it further. For there the Petition is: Item, as it is contained in the grandCharter and other Statutes, That no manke taken or imprisoned by special command without Indictment or other process to be made by the Law upon them, as well of things done out of the Forrest of the King, as for other things; Thatis would please our said Lord to command those to be delivered, that are so taken by special command, against the som of the Charters and Statutes aforesaid.

The Answer is, The King is pleased, mons that if any man find himself grieved, ave that he come and make his complaint, even and right shall be done unto him.

37. Edw. 3. cap. 18. agreeth in sub-shich stance, when it saith, Though that it be aken contained in the great Charter, that no bre the man be taken, nor imprisoned, nor put serw

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out of his Freehold, without process of the Law: Nevertheless divers people make falle Suggestions to the King himfelf; as well for malice or otherwise, whereof the King is often grieved, and divers of the Realm put in damage, against the form of the said Charter; wherefore it is ordained that all they which make fuggestions, shall be sent with the same suggestions before the Chancellor, Treasurer, and his grand Council; and that they there find Sureto purfue their fuggestions: and incur the same pain that the other should have had if he were attainted, in case that his suggestion be found evil; and that then process of the Law be made against them, without being taken and imprifoned against the form of the Charter, and other Statutes. Here the Law of the land in the grand Charter is explained who without process of the Law.

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42. Edw. 3. at the request of the Commons by their Petitions put forth in this Parliament, to eschew mischief and ammage done to divers of the Comded, mons by false Accusers, which oftentimes red, are made their accusation more for int, evenge and fingular benefit, than for be profit of the King or of his People; Sub which accused persons, some have been t be aken and sometime caused to come bet no bre the Kings Council, by Writ or oput lerwise, upon grievous pains against out

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the Law, it is affented and recorded for the good governance of the Commons, that no man be put to answer without presentment before Justices, or matter of Record, or by due process and Writ original, according to the old Law of the Land: and if any thing from henceforth be done to the contrary, it shall be void in the Law, and holden for Error.

But this is better in the Parliament-Roll, where the Petition and Answer (which make the Act) are set down at large 32. Edward 3. Rot. Parl. n. 12. The Petition. Item, because that many of the Commons are hurt and destroy. ed by false Accusers, who make their Accufations more for their revenge and particular gain, than for the profit of the King or his People: And those that are accused by them, some have been taken, and others are made to come before the King's Council, by Writer other Command of the King, upon grievous pains, contrary to the Law That it would please our Lord the King, and his good Council, for the just Government of his People, to ordain, that if hereafter any Accuser purpose any matter for the profit of the King, that the matter be fent to the Justices of the one Bench or the other, or the Affizes, to be enquired and determined according to the Law; and if it concern the AccuAccuser or Party, that he take his Suit at the Common Law, and that no man be put to answer, without presentment before Justices, or matter of Record, or by due process and Original Writ, according to the antient Law of the Land; and if any thing henceforward be done to the contrary, that it be void in Law, and held for error. by due process and original Writ, according to the antient Law of the Land, is meant the same thing as per legem terræ in Magna Charta. And the abuse was, that they were put to answer by the Commandment of the King. King's answer is thus. Because that this Article is an Article of the Grand Charter: The King will that this be done as the Petition doth demand. By this appeareth that per legem terre in Magna Charta, is meant by due process of the Law.

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Thus your Lordships have heards Acts of Parliament in the point. But the Statute of Westminster the first cap. 15. is urged to disprove this opinion, where it is expressly said, that a man is not replevisable who is committed by command of the King. Therefore the command of the King without any cause shewed, is sufficient to commit a man to Prison. And because the strength of the Argument may appear, and the answer be better understood, I shall read the words

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of that Statute, which are thus: And for as much as Sheriffs and others, which have taken and kept in Prison persons detected of Felony, and oftentimes have let out by Replevin, fuch as were not replevisable; because they would gain of the one party, and grieve the other. And for as much as before this time it was not certainly determined what perfons were replevifable, and what not, but onely those that were taken for the death of a man, or by commandment of the King, or of his Justices, or for the Forrest; it is provided, and by the King commanded, that fuch Prisoners as before were out-lawed, and they which have abjured the Realm, Provers, and fuch as be taken with the manner, and those which have broke the Kings Prifon, Thieves openly defamed known, and fuch as be appealed by Provers, folong as the Provers be living, if they be not of good name, and suchas be taken for burning of Houses felonioully done, or for falle money, or for counterfeiting the Kings Seal, or Persons excommunicate, taken at therequest of the Bishop, or for manifest offences, or for Treason touching the King himself, shall be in no wife replevisable, by the common Writ, or without Writ. But fuch as be Indicted by Larceny, by Inquests taken before Sheriffs or Bayliffs by their Office, or of light suspition, or for petty

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petty Larceny, that amounteth not above the value of 12 d. if they were not guilty of some other Larceny aforetime. or guilty of receipt of Fellons, or of commandment or force, or of aid in Felony done, or guilty of some other Trespass, for which one ought not to lofe Life or Member; and a man appealed by a Prover; after the death of the Prover if he be no common Thief, nor defamed, shall from henceforth be let out by fufficient Surety, whereof the Sheriff will be answerable, and that without giving ought of their Goods. And if the Sheriff or any other, let any goat large by Surety, that is not replevisable; if he be the Sheriff, Constable, or any other Bayliff of Fee, which hath keeping of Prisons, and thereof be attained, he shall lose his Fee and Office for ever. And if the Under-Sheriff, Constable or Bayliff of fuch as hath Fee for keeping of Prisons, do it contrary to the will of his Lord, or any other Bayliff being not of Fee, they shall have three years Imprisonment, and makea Fine at the Kings pleasure. And if any with-hold Prisoners replevisable, after they have offered fufficient Surety, he shall pay a grievous amerciament to the King; and if he take any Reward for the deliverance of fuch, he shall pay double to the Prisoner, and also shall be in the great mercy of the King. answer is, it must be acknowledged, that

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that a man taken by the command of the King is not replevifable, for so are the express words of this Statute, but this maketh nothing against the Declaration of the Commons; for they fay not that the Sheriff may Replevin fuch a man by Surety, scilicet Manucaptores: but that he is bailable by the Kings Court of Justice: for the better apprehending whereof, it is to be known that there is a difference betwixt Replevisable, which is always by the Sheriff upon Pledges or Sureties given, and Bailable by a Court of Record, where the Prisoner is delivered to his Bail, and they are his Jailors, and may imprison him, and shall fuffer for him body for body, as appeareth 33. and 36. Edw. 3. in the title of Mainprise, plit. 12, 13. where the difference betwixt Bail and Mainprise is expresly taken. And if the words of the Statute it felf be observed, it will appear plainly that it extends to the Sheriffs and other inferiour Officers, and doth not bind the hand of the Judges. The Preamble, (which is the Key that openeth the entrance into the meaning of the Makers of the Law) is: Forasmuch as Sheriffs, and others, which have taken and kept in Prison persons detected of Felony. Out of these words I observe, that nominateth Sheriffs: and then the Justices should be included, they they must be comprehended under the general word, Others; which doth not use to extend to those of an higher rank, but to inferiours: For the best, by all course is first to be named; and therefore if a man bring a writ of Customs and Services, and name Rents and other things, the general words shall not include Homage, which is a personal service, and of an higher nature; but it hall extend to ordinary annual Services, 31 Edw. 1. droit 67. So the Statute of 13 Eliz. cap. 10. which beginning with Colledges, Deans and Chapters, Parfons and Vicars, and concludes with these words, and others (and others having spiritual promotions) shall not comprehend Bishops, that are of an higher degree, as appeareth in the Arch-Bishop of Canterbury his Case reported by Sir Edm. Cook lib. 2. fol. 466. And thus much is explained in this very Statute, to the end when it doth enumerate those were meant by the word other, namely Undertheriffs, Constable, Bayliffs. Again, the words are; Sheriffs and others, which have taken and kept in Prison. Now every man knoweth, that Judges do neither arrest nor keep men in Prison; that is the office of Sheriffs and other inferior Ministers; therefore this Statute meant fuch only, and not Judges. The words are further, that they let out by replevin fuch as were not replevisable. This is the proper

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proper language for a Sheriff: Nay more express afterwards, in the body of the Statute: That fuch as are there mentioned, shall be in no wife replevisable by the common Writ (which is de homine replegiando, and is directed to the Sheriff) nor without Writ (which is by the Sheriff, Ex Officio.) But that which receives no answer, is this: That the command of the Justices (who derive their authority from the Crown) is there equalled as to this purpose with the command of the King; and therefore by all reasonable construction, it must needs relate to Officers that are subordinate to both, as Sheriffs, Undersheriffs, Bayliffs, Constables, and the like: and it were an harsh exposition to say, that the Justices might not discharge their own command; and yet that reason would conclude as much. And that this was meant of the Sheriffs and other Ministers of Justice, appeareth by the Recital of 27 Edw. 3. cap. 3. and likewise by Fleta, a Manuscript so called, because the Authorlay in the Fleet when he made the Book. For he lib.2. cap. 52. in his Chapter of Turns, and the views of the hundred Courts in the Countrey, fetteth down the Articles of the charges that are there to be enquired of; amongst which, one of them is, De replegialibus injuste detentis & irreplegialibus dimissis; which cannot be meant of not bailing by the Justices. For what have the the inferior Courts of the Countrey to do with the Acts of the Juffices? And to make it more plain, he fetteth down in his Chapter (that concerns Sheriffs only) the very Statute of West. 1. cap. 15. which he translates verbatim out of the French into Latin, fave that he renders, taken by the command of the Justices thus, Per judicium Justitiariorum, and his Preface to the Statute plainly sheweth that he understood it of Replevin by Sheriffs: for he saith, Qui debent per plegios dimitti, qui non declaret hoc Statutum; and per plegios is before the Sheriff. But for direct authority, it is the opinion of Newton Chief Justice, 22 Henry 6.46. where his words are thefe: It cannot be intended but the Sheriff did suffer him to go at large by mainprise; for where one is taken by the Writ of the King, at the commandment of the King, he is replevisable; but in such Cases his Friends may come to the Justices for him if he be arrested, and purchase a Supersedem. This Judg concludes, that the Sheriff cannot deliver him that is taken by the command of the King, for that he is irreplevisable, which are the very words of the Statute: but faith he, his Friends may come to the Justices, and purchase a Supersedeas. So he declares the very queftion, that the Sheriff had no power, but that the Justices had power to deliver him who is committed by the Kings com-

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command, and both the antient and modern practice manifelts as much. For he that is taken for the death of a man, or for the Forrest, is not replevisable by the Sheriff; yet they are ordinarily bailed by the Justices, and were by the Kings Writs directed to the Sheriffs in the times of Edw. 1. & Edw. 2. as it appears in the close Rolls, which could not be done if they were not bailable: and it is every days experience that the Justices of the Kings-Bench do bail for murder, and for offences done in the Forrest; which they could not do, if the word Irreplevisable in Westmingt. I. were meant of the Justices as well as the Sheriffs.

Object. 1.

For the Authorities that have been offered to prove the contrary, they are in number three. The first is 21 Edw. I. Rot. 2. in Scrin. which is also in the book of Pleas in the Parliament at the Tower fol. 44. It is not an Act of Parliament, but a Resolution in Parliament, upon an Action there brought, which was usual in those times. And the Case is, that Stephen Rabab Sheriff of the Counties of Leicester and Warwick, was questioned for that he had let at large, by Sureties, amongst others, one William the Son of Walter le Persons, against the will and command of the King, whereas the King had commanded him by Letters under his Privy Seal, that he should do no favour to any man, that was committed mitted by the command of the Earl of Warwick, as that man was: Whereunto the Sheriff answered, that he did it at the request of some of the King's Houshold upon their Letters. And because the Sheriff did acknowledg the receipt of the King's Letters, thereupon he was committed to Prison, according to the form of the Statute.

To this I answer, that the Sheriff was justly punished, for that he is expresly bound by the Statute of West. 1. which was agreed from the beginning. this is no proof that the Judges had not

power to bail this man.

The next Authority is 33 Hen. 6. in Object. 2. the Court of Common Pleas, fol. 28. b. 29. where Robert Poynings Esq; was brought to the Bar upon a Capias, and it was returned, that he was committed per duos de Concilio (which is strongest against what I maintain) pro diversis causis Regem tangentibus. And he made an Attorney there in an Action: Whence it is inferred, that the Return was good, and the Party could not be delivered.

To this the answer is plain. First, no Resp. Opinion is delivered, in that Book, one way or other upon the Return, neither is there any testimony whether he were

delivered or bailed, or not.

Secondly, it appears expresly that he was brought thither to be charged in an Action of Debt at another mansSuit, and

no defire of his own to be delivered or bailed: and then, if he were remanded it is no way material to the question in hand.

Object. 3.

But that which is most relyed upon, is the Opinion of Stamford in his book of the Pleas of the Crown Lib. 2. cap. 18. fol. 72,73. in his Capter of Mainprise, where he reciteth the Chapter of West.1. cap. 15. and then faith thus, By this Statute it appears, that in four Causes at the Common Law a man was not replevifable: to wit, those that were taken for the death of a man, by the command of the King, or of his Justices, or Thus far he is most for the Forrest. right. Then he goeth on and faith; As to the command of the King; that is understood of the command by his own mouth, or his Council, which is incorporated unto him and speak with his mouth; or otherwise every Writ of Capias to take a man (which is the Kings command) would be as much. to the command of the Justices, their abfolute commandment; for if it be their ordinary commandment, he is replevifable by the Sheriff, if it be not in some of the Cases prohibited by the Statute.

The answer that I give unto this, is, that Stamford hath said nothing whether a man may be committed without cause by the Kings command, or whether the Judges might not bail him in

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fuch Case; but only that such an one is not replevisable; which is agreed; for that belongs to the Sheriff: and because no man should think he meant any such thing, he concludes his whole fentence touching the command of the King and the Justices, that one committed by the Justices ordinary command is replevifable by the Sheriff; So either he meant all by the Sheriff; or at least it appears not that he meant, that a man committed by the King or the Privy Council, without cause, is not bailable by the Juflices: and then he hath given no opinion in this Case. What he would have faid, if he had been asked the question, cannot be known: Neither doth it appear by any thing he hath faid, that he meant any fuch thing as would be inforced out of him.

And now, my Lords, I have performed the command of the House of Commons, and (as I conceive) shall leave their Declaration of personal liberty an antient and undoubted truth, fortified with seven Acts of Parliament, and not opposed by any Statute or Authority of Law whatsoever.

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The Objections of the Kings Council, with the Answers made thereunto at the two other conferences touching the same matter.

neral, that the seven Statutes urged by the Commons were in force, and that Magna Charta did extend most properly to the King. But he said, that some of them are in general words, and therefore conclude nothing; but are to be expounded by the Precedents, and others, that be more particular; are applied to the suggestions of Subjects; and not to the Kings command simply of it self.

Hereunto is answered, that the Statutes were as direct as could be, which appeareth by the reading of them, and that though some of them speak of suggestions of the Subjects, yet others do not and they that do are effectual; for that they are in equal reason; a commitment by the command of the King being of as great force when it moveth by suggestion from a subject, as when the King taketh notice of the cause himself; the rather, for that Kings seldom intermeddle with matters of this nature, but by information from some of their people.

2. Master Attorney objected, that per legem terræ in Magna Charta (which is the foundation of this question) cannot be understood for process of the Law

and

and Original Writ: for that in all criminal proceedings no Original Writ is used at all, but every Constable may arrest, either for Felony, or for breach of the Peace, without process or Original Writ: And it were hard the King should not have the power of a Constable: and the Statutes cited by the Commons make process of the Law, and Writ Ori-

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The answer of the Commons to this Objection was, that they do not intend Original Writs only by the Law of the land, but all other legal process which comprehend the whole proceedings of law upon the cause; other than the tryal by Fury, per judicium parium, unto which it is opposed. Thus much is imposed ex vi termini, out of the word Proces, and by the true acceptation thereof in the Statute have been urged by the Commons to maintain their Declaration; and most especially in the Statutes of 25 Edw. 3. cap.4. where it appeareth; that a man ought to be brought in to answer by the course of the Law, having made former mention of process made by Original Writ. And in 28 Edw. 3. up. 3. by the course of the Law, is rendred by due process of the Law. 36 Edw. 3. Rot. Parlinu. 20. the Petition Plond. 189.

of the Commons faith, that no man Cook 5. 11.

ought to be imprisoned by special com
2 R. 3. 18, 21.

mand without Indictment or other due

6. cap. 4.

process

The Argument of the H. of Commons 244

process to be made by the Law. 37 Ed.3. cap. 18. calleth the same thing process of the Law. And 42 Ed.3. cap.3. stilethit by due process and Writ Original; where the Conjunctive must be taken for a Disjunctive; which change is ordinary in exposition of Statutes and Deeds to avoid inconveniences, and to make it fland with the rest, and with Reason, and it may be collected, that by the Law of the Land in Magna Charta; by the course of the Law in 25 Ed. 3. by due process of the Law in 28Ed.3. otherdu process to be made by the Law 36 Ed. process of the Law 37 Ed.3. and by due process and Writ Original 42 Ed. 3. are meant one and the same thing; the latter of these Statutes referring always to the former; and that all of them import any due and regular proceeding of Law upon a cause, other than a trial by Jury. And this appeareth Cook 10.74. in the case of the Marshalsea; and Cook 11.99. Sir James Bagg's case, where it is under flood of giving jurisdiction by Charter or Prescription, which is the ground of proceeding by course of Law; and in Seldens Notes on Fortescue fol. 29. when it is expounded for Wager of Law, which is likewise a TRYAL at Law by the just Oath of the party, differing from that son of Jury: and it doth truly comprehend que these and all other regular proceedings to sin Law upon cause, which gives authority

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rity to the Constable to arrest upon cause: and if this should not be the true exposition of these words (per legem terte) the Kings Council were defired to declare their meaning; which they never offered to do; and yet certainly, these words were not put into the Stame, without some intention of consequence.

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And thereupon M. Serjeant Ashley offered an interpretation of them thus; mmely, that there were divers Laws of his Realm; as the Common Law; the law of the Chancery; the Ecclefiastical law; the Law of Admiralty or Marine law; the Law of Merchants; the Maril Law; and the Law of State; And that these words (per legem terræ) do extend to all those Laws.

To this it was answered, That we rad of no Law of State, and that none of those Laws can be meant there, save the Common, which is the principal and meral Law, and is always understood way of Excellency, when mention is made of the Law of the Land generally; and that though each of the other Laws which are admitted into this Kingdom ich by Custom or Act of Parliament, may the justly be called a Law of the Land; yet hat mone of them can have that preheminenend of to be stiled the Law of the Land; and ngs no Statute, Law-book, or other Authohe my, printed or apprinted, could be rity

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shewed to prove that the Law of the Land, being generally mentioned, wasever intended of any other Law than the Common Law (and yet, even by thefe other Laws a man may not be committed without a cause expressed) but it standeth with the Rule of other legal expositions, that per legem terre must be meant the Common Law, by which the general and univerfal Law by which men hold their inheritances, and therefore if a man speak of Escuage generally, it is understood (as Littleton observeth pit. 99.) of the incertain Escuage, which is a Knights service tenure for the defence of the Realm by the body of the Tenant in the time of War; and noted the certain Escuage which givethonly a contribution in money, and no perfenal service. And if a Statute speak of the King's Courts of Record, it is meant only of the four at Westminster by way of Excellency: Cook. 6.20. Gregories cofe. So the Canonifts, by the excommunication, if fimply spoken, do intend the greet ject ror in his Institutions, saith, that the Civil Law being spoken generally, is mean I of the Civil Law of Rome, though the ak Law of every City is a Civil Law, a of when a man names a Poet, the Grecian the understand Homer, the Latinists Virgil. her

Secondly, admit that per legem tendled extend to all the Laws of the Land; ye mer aman must not be committed by any of them, but by the due proceedings that are exercised by those Laws, and upon ause declared.

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Again it was urged, that the King is not bound to express a cause of impriforment; because there may be in it matter of State not fit to be revealed for a time, lest the Confederates thereupon make means to escape the hands of Jufice: and therefore the Statutes cannot be intended to restrain all Commitments, unless a cause be expressed; for that it would be very inconvenient and dangerous to the State to publish the oule at the very first.

Hereunto it was replied by the Commons, That all danger and inconvenimee may be avoided by declaring a general cause; as for Treason; for subition of Treason, Misprision of Treafon or Felony, without specifying the particular; which can give no greater light to a confederate then will be conectured by the very apprehention or pe upon the imprisonment, if nothing at

i all were expressed.

It was further alledged, that there was the a kind of contradiction in the Polition of the Commons, when they fay, that and the party committed without a cause 1. Thewed, ought to be delivered and baime led; bailing being a kind of imprisonye ment, delivery a total freedom. Tq

To this it was answered, that it hath always been the discretion of the Judge to give so much respect to a commitment by the Command of the King, or the privy Council, (which are ever intended to be done on just and weight causes) that they will not presently set him free, but bail him to answer what shall be objected against him on his Maiesties behalf: But if any other inferious Officer commit a man without cause fhewed, they do instantly deliver him as having no cause to expect their pleasure, so the delivery is applyed to an impriforment, by the command of forme mean Minister of justice, bailing when it is done by the command of the K.or his Council.

It was urged by Master Attorney, That bailing is a grace and favour of a Count of Justice, and that they may refuse to do it. This was agreed to be true in divers causes, as where the cause appeareth to be for felony, or other crime expressed for that there is another way to difcharge them in convenient time by their tryal; (And yet in those cases the constant practice hath been antiently and modernly to bail men) but where no cause of the imprisonment is returned, but the command of the King, there's no way to deliver fuch persons, by tryal or otherwise, but that of Habeas Corpu, and if they should be then remanded, they may be perpetually imprisoned,

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without any remedy at all, and confequently, a man that had committed no Offence, might be in worse case than a great Offendor; for, the latter should have an ordinary tryal to discharge him, the other should never be delivered.

It was further faid, that though the Statute of West. 1. cap. 15. as a Statute, by way of provision did extend only to the Sheriff; yet the Recital in that Stame, touching the 4. Causes wherein a man was not replevisable at common law (namely those that were committed for the death of a man; by the command of the King, or the Justices, or for the Forrest) did declare that the Justies could not bail fuch an one, and that Replevisable and Bailable were Synomma, and all one. And that Stamford (a Judge of great Authority) doth expound it accordingly; and that neither the Statute nor He say replevisable by the Sheriff, but generally without refraint; and that if the Chief Juttice committed a man, he is not to be enlarged by another Court, as appeareth in the Register.

1. To this it was answered; First, that the Recital and Body of the Statute telate only to the Sheriff, as appeareth

by the very words.

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2. That Replevisable is not restrained to the Sheriff; for that the word imports no more, that a man committed

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by the Justice is bailable by the Gourt of the Kings Bench.

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3. That Stamford meaneth all of the Sheriff, or at the least he hath not fufficiently expressed that he intended the

Justices.

4. It was denyed that Replevisable and Bailable are the same: For, they differ in respect of the place where they are used, Bail being in the King's Courts of Record, Replevisable before the Sheriff. And they are of several Natures. Replevisable being a letting at large upon Sureties; Bailing, when one Traditur in ballium, and the Bail are his Jaylors, and may imprison him, and shall suffer body for body, which is not true of replevying by Statutes. And Bail differeth from Mainprize in this, that Mainprize is an undertaking in a form certain, Bailing to answer the condemnation in civil Causes, and in criminal body for body.

And the Reasons and Authorities used in the first conference, were then renewed, and no exception taken to any, save that in 22. Hen. 6. it doth not appear that the Command of the King was by his mouth (which must be intended) or by his Council (which is all one, as is observed by Stamford) for the words are, that a man is not replevisable by the Sheriff, who is committed by the Writ or Commandment of the King.

21. Edm,

by the Kings Council. But it was answered that it concerned the Sheriff of Leicestershire only; and not the power

of the Judges.

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33. Hen. 6. the Kings Attorney confelled was nothing to the purpose; and yet that Book had been usually cited by those that maintain the contrary to the declaration of the Commons; and therefore such sudden opinion as hath been given thereupon, is not to be re-

garded, the Foundation failing.

And where it was faid, that the French of 36. Edw. Rot. Parl. n. 9. (which can receive no answer) did not warrant but what was enforced thence; but that these words, (Sans disturbance metter, on wrest faire, & l'encontre per special mandement ou en autre manere) must be understood, that the Statutes should be put in execution without disturbance or fay; and not that they should be put in execution without putting diffurbance, or making arrest to the contrary by special command, or in other manner. The Commons did utterly deny the interpretation given by the Kings Council; and to justifie their own, did appeal to all men that understood French, and upon the seven Statutes did conclude that their Declaration remained an undoubted truth, not controuled by any thing faid to the contrary. The The true Copies of the Records cords not Printed, which were used on either side in that part of the debate.

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Inter Record. Domini Regis Caroli in Thesaurar. recep. Sccii. Sui sub Custodia Domini Thesaurar. & Camer. ibidem remanen. videlicet Plac. coram ipso Domino Rege & Conoilio suo ad Parliamentum suum post Pasc. apud London in Manerio Archiepiscopi Ebor. Anno Regni Domini Regis Edwardi 21. int. d. sic. continetur ut sequitur.

Rot. Secundo in Dorfo.

Vic. Leicefter.

C Tephanus Rabar. Vic.Leic. & Wan. oram ipso Domino Rege & ejus Concilio arrenatus & ad rationem politus de hoc quod cum Johan. Bouteteuru, Edw. Del Hache, & W. Havelin nuper in bal. ipsius Vic. per Dominum Regen fuiffent affignat. ad Goales Domini Regis deliberand. idem Vic.quendam Wilhel. de Petling per quendam Appellatorem ante adventum eorum justic. ibidem appellatorem & Captum vivente ipso Appellatore usque diem deliberationis coram eis fact. dimisit per plevinam contra formam Statuti, &c. Et etiam quendam Radum de Cokehal, qui de morte hominis judicatus fuit, & per eundem Vic. Captus, idem Vic. per plevinam

plevinam dimisit contra formam Statuti, & etiam eundem Radum sme ferris coram eisdem Justic. ad deliberationem præd. produxit contra consuetudinem Regni. Et sci. quendam Wilh. filium Walteri la persone, qui per præceptum Com. War. Captus fuit, per plevinam contra præceptum Domini Regis, cum idem Dominus Rex per literas suas sub privat. sigillo suo eidem Vic. præcepit quod nulli per præcept.præd.Com.War. capt. aliquam gratiam faceret, &c. Et fuper hoc præfat. Johannes Botetourte, qui præsens est, & qui fuit primus Justic. prædictorum præmissa recordatur. prædictus Vic. dicit quoad prædictum Wilh. de Petling, quod ipse nunquam a empore Captionis iplius Wilh.per præd. Appellat. dimissus fuit per plevinam aliquam ante adventum prædictorum ustic. Imo dicit quod per dimidium Annum ante adventum eorundem Juflic. captus fuit & semper detent. in prilona absque plevina aliqua quousque coram eis damnat. fuit. Et quoad prædictum Radum bene cognoscit quod iple dimifit eum per plevinam, & hoc bene facere potuit ratione & authoritat. Officii fui, eo quod capt. fuit pro quadam simplic. transgr. & non pro aliqua felon. pro qua replegiari non potuit. Et guoad tertium, videlicet Wilh. filium 8 persone, bene cognoscit quod ipse Capper tus fuit per præcept. præd. Com. War.

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& guod dimisit eum per plevinam; Sed dicit quod hoc fecit ad rogatum quorundam de hospitio & cur. Domini Regis, &c. qui eum inde specialiter rogaverunt per literas suas. Et super hoc idem Vic quæsit. per Dominum Regem quis cum rogavit & literas suas ei direxit, & ubi literæ illæ funt, dicit quod Walt. de Langton eum per literas suas inde rogavit; Sed dicit quod literæ illæ funt in partibus suis Leic. Et super hoc idem Vic. profert quoddam brev. Domini Regis de privat. Sigillo eidem Vic. direct. quod testatur quod Dominus Rex ipsi Vic. præcepit quod omnes illos transgressores contra pacem & de quibus Com. War. ei seire faceret, caperet & salvo custodiret absque aliqua gratiaei faciend. Et quia præd. Justic. expresse recordatur quod ipse & socii sui per bonam & legalem inquis. de Militibus & al, liberis, hominib. eis fact. invenerunt quod prædictus Gulielmus de Petlenge dimissus suit per plevinam per magnum tempus ante adventum eorund. Justic. usque adventum eorund. & per Vic. præd. & etiam quia præd. Vic. cognoscit quod prædictus Rad. dimissus fuit per plevinam per ipsum, un. & hoc dicit quod bene facere potuit eo quod captus fuit pro levi transgr. Et per Record. ejusdem Justic. comp. est quod captus suit pro morte hominis, quod est contrarium dec. prædicti Vic.& scil. quia idem Vic. Vic. cognovit quod recepit literam Domini Regis per quam Rex ei præcipit quod nullam gratiam faceret illis qui capti fuerunt per præceptum prædicti Com. Et idem Vic. contra præceptum illud dimisit prædictum Wilh. hlium Walteri per plevinam, qui captus fuit per præceptum prædicti Com. prout idem Vic. fatetur. Et sic tam ratione istius transgr. quam aliarum prædictarum incurrit in pænam Statuti, cons. est quod prædictus Vic. committatur prifonæ juxta formam Statuti, &c.

Ex Rot. Parliamenti de Anno Regni Regis Edwardi tertii Tricesimo quinto n. 9.

PRimerement que le grande Charter, & la Charter de la Forreste, & les autre Estatutes faits en son temps, & de ses progenitors pur prosit de luy & de la come, soint bien & ferment gardes, & mis en due execution sans disturbance mettre ou arrest faire, & l'econtre per special mandement ou en autre manere.

Respons.

Nostre Sr. le Roy per assent de Prelates, Domines, Comites, Barones & la Come ad ordeine & estabilique les dits Charters & Estatutes soient tenus & mis en execution selon la dit Petition.

Nu. 2.

Item come il soit contenus en la grand Charter

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Charter & autres Estatutes que nul bomme soit pris nemy prisoner per special mandement sans Enditement aut autre due proces affaire per la ley, et sonent foitz ad estre et uncore est, que plusurs gentz sont empeschez, pris & imprisone sans Enditement ou autre proces fait per la ley sur eux, si bien de chose fait hors de la Forrest le Roy come per autre cause que plese a nostre dit Sr. comander et deliver ceux que sont issint pris per tiel especial mandement contre la forme des Charters et Estatutes avanditz. Respons. Il plest au Roy, & sinul se sente grieve vingne & face la pleinte, & droit luy sera fait.

Parl. Anno 42. Edward 3. n. 12.

Item pur ceo que plusours de vostre Come Sontamerce & disturbis per faulx accusors queux font lour accusements plus pur lour vengeances & singulers profits que pur le profit de Roy ou de son peuple, et les accuses per eux ascuns ont est pris & ascuns sont faire ven. devant le Concil le Roy per brief ou autre mandement de Roy sub grande pain encountre la ley, Plese a nostre Sr.le Roy & Son Conceil pur droit gouvernment de son peuple ordeign que si desire ascun accusors purpose ascun matire pur profit du Roy que cele matire soit mander a ses Justices del' un Banke ou del' autre, ou d' Assises deut enquere & terminere selonque la ley, & si le touche lai onsour ou partie eit sa sont à la come ley, & que null home foit mis a re-Mondre

fondre sans presentment deut fustices, ou shose de Record, ou per due proces & briefe original, selon l'ancient ley de la terre, & si rien desire enovant soit fait a l'encontre, soit voide en ley & tenu pour Errour. Pur ceo que ceste Article est Article de la grande Charter le Roy voet que ceo soit fais come la Petition demande

Ex Rot. Clauf. Anno Regis Edwardi primi primo m. I.

Thomas de Clirowe de Belchweth cap- De ponend. pi us & detentus in prisona North. pro ransgr. Forrest. habet literas Rogero de Clifford Justic. Forrest citra Trentam quod ponatur per ballium, dat. apud S. Martium Magnum London 20. die Octobris.

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Stephanus de Lidely captus & detent. in prisona Regis pro trans. per ipsum act. in ha. Regis de Lyndeby habet literas, Regis Galfrido de Nevil Justic. ultra Trent. quod ponatur per Ballium

M. 9.

Thomas Spademan captus & detent in prisona Oxon. pro morte Wilh. Win. unde rectat. est & habet literas Regis Vic. Oxon, quod ponatur per ballium. ibidem.

Gulielmus de Dene, Mathæus Crust, Roger de Bedell, Gulielmus Halfrench, Robertus Wyant, Alex. Horeux, Henric. do

de Shorne, Nicholaus de Snodilond Turgifius de Hertfield, Robertus de Pole, & Richardus Galiot capti & detent. in prisona de Cantuar. pro morte Galfridi de Catiller unde appellat. funt. habent literas Regis Vic. Canc. guod popantur per balliumDat. &c. 23. die Martii.

Clauf. Anno secundo Edwardi primi M. 12,

Rex Rogero de Cliffi Justic. Forrest citra Trent. Mandamus vobis quod fi Robertus Unwyne captus & detent. in prisona nostra de Aylesburie pro transgr. Forrestæ nostræ, invenerit vobis duodecim probos & legales homines de balliva vestra qui manucapiant eum habere coram Justic. nostris. ad plac. Forrest. cum in parte, &c. ad fland. inde rect. tuncapud Robertum si secund. assiam. Forreste fuerit repleg. prædictis 12. interim tradit. in ballium sicut prædictum eft. Et habeatis nomina illorum 12. hominum & hoc bre. Dat. 27. die Februaril.

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Claufo Anno secundo Edwardi primi. M.24

Deponend. per ballium.

Unwynus de Boycot, Gaf. de Wykem & Hugh de Stowe detent.in prisona Regis de Aylesburie pro trangressione Venationis habuer, bre. direct. Regis de Clifford Justic. Forrest quod secundum assiam Forrest fuerint repleg. ponantur per ballium usque adventum Justic. Regis ad plac. Forreste cum in partes illas & la venerit. Dat. apud Codington 28. die quil Decembris. M. 15.

M. 15.

Gilbertus Conray de Kedington, & Hugh Le Tailour de Kedington capti & detent. in prisona de secundo Edwardo pro morte Edwardi Butting, unde rectati funt, habuerunt literas Regis Vic. Suff. quod ponantur per ballium.

Clauso Anno 3. Edwardi primi.

M. 11.

Galfr. de Hayerton captus & detent. in prisona Regis Ebor. pro morte Ade le Chrc. unde rectatus est. habet literas Regis Vic. Ebor. quod ponatur per ballium. Dati apud W. 15. die Junii.

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Robertus Belharbe capt. & detent. in prisona Regis de Newgate pro morte Thomæ Pollard. unde rectat. est, habet literas Regis Vic. Midd. quod ponatur per ballium. Dat. 28. die Februarii.

Clauso Anno quarto Edwardi primi.

M. 5.

Mand. est Rad. de Sandwico quod si Gulielmus de Pattare & Fohannes filius e-Jus, Walterus Home, Walt. Forven, Hentions Pothe & Gulielmus Cadegan capti dum & detent. in prisona Regis de secundo ntur Brianello pro trans. Forrett unde rectati Re- unt, invenerunt sibi duodecim probos illas & legales homines de balliva sua, vizi die quilibet corum duodecim qui eos manucap. 15.

nucap. habere coram Justic. Regis ad plac. Forrest. cum in partes ill.venerent. ad Itand, inde recto, tunc ipfos Wilhel. mum. Johannern, Walterum, Walterum, Henricum & Wilh. præd. duodecim scil secundum affiam Forreste fuerint repleg. tradat in ballium ut grædictum est. Et habeat ibi nomina illorum duodecim hominum, & hoc. bre. T. Rege apud Bellum locum Regis 29. die Augusti.

Glaufo Anno quarto Edwardi primi

M. 16.

Henricus filius Rogeri de Ken de Cot-Deponend. Per. ballium. tesbrook, captus & detent. in prison nostra North. pro morte Simonis k Charetter unde appellatus eit, habet literas Regis Vic. North. quod ponit.pr ballium.

Clauso Anno quinto Edwardi primi. M. 1.

Mand. est Galfrido de Nevil Justic Forrette ultra Trent. quod fi Walter de la Grene captus & detent. in prisonad Nott. pro trans. Forreste invenerit fin duodecim probos & legales hominesqui eum manucapiant, &c. ad stand. inde rect. secundum affiam Forrette Regis, tunc iplum Walterum prædictis duode cim tradat in ballium ficut prædictum est. Dat. decimo sexto die Novembris

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M. 2.

Thomas de Upwel & Jul. uxor ejus capt. & detent. in prisona de Wynbole pro morte Stephani Southell unde rectafunt habuer. liter. Vic. Norff. quod ponantur per ballium. Dat. apud Rocheand 28. die Septembris.

Clanfo Anno fexto Edwardi primi.

M.

Bilherus Pesse captus & detent. in prisona Regis de Norwich pro morte lul. quond. uxoris fuæ unde rectatus of, habet literas Vic. Norff. quod pomur per ballium, T. Rege apud Westmonast. 12. Novembris.

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Mandat. est Vic. Nott. scilicet quod l'Thomas de Cadrte rectatus de transg. forrest quam fecisse dicebatur in Fornto de Shirwood, invenerit sibi sex probos & legales homines de balliva fua quieum Reg. ad stand. rect. coram R. um R. inde manucap. habere coram Rege ad mand. verf. eum loqui voluerit, func præd. Tho. præd.fex hominib. traut in ballium juxta manucaptionem spradictam. Dat, decimo quinto die gis, Decembris.

Thom. Burell capt. & detent. in prilona Regis Bron. pro morte Calf. Giffarde farde unde rectat. est, habet litteras Vic. Devon. quod ponatur per ballium.

> Clauso Anno 3. Edwardi secundi. M. 13.

Adam deponend. in bail. Adam le Piper Capt. & detent, in Gaole Regis Ebor. pro morte Henr, le Simer de Escrike unde rect. est, habet literas Regis Vic. Ebor. quod ponatur per ballium usque ad prim. assiam. T. Rege apud Westm. septimo die Febr.

M. 14.

Margareta uxor Wilh. Calbot capta & detent. in Gaole Regis Norwic, promorte Agnetis filiæ Wilh. Calbot & Martil. soror.ejusdem Agnet, unde redaest, habet literas Regis Vic. Norst. quod ponatur per ballium T. Rege apud Shene 22. die Jan.

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M. 18.

Johannes Frere Capt. & detent in Gaole Regis Exon. pro morte Ade de Egeleigh unde rectat. est, habet literas Regis Vic. Devon. quod ponatur per ballium. T. Rege apud Westm. 8. die Decembris.

Clauso Anno quarto Edwardi secundi. M. 7.

Robertus Shereve capt. & detent in Ang Gaole Regis de Colcestr. pro morte Roberti le Moigne unde indictat. est, habe prod berti le Moigne unde indictat. est, habe prod literas Regis Vic. Essex. quod ponațu mar

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in ballium usque ad pri. assiam. Dat.22. die Maii.

Wilh. filius Rogeri le Fishere de Shurborne capt. & detent. in Gaole Rogis Ebor. pro morte Roberti le Monnour de Norton unde rectatus est, habet liteas Regis Vic. Ebor. quod ponatur per ballium usque ad pri. Assiam, Dat. 25. Die April.

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ras per Clauso Anno quarto Edwardi secundi. M. 22.

Thom. Ellys de Stamford capt. & letent. in prisona Regis Lincoln. pro morte Michael. filii Wilh. de Foderingev unde rectatus est, habet literas Regis Vic. Linc. quod ponatur in ballium usque ad pri. Assiam. T. Rege apud noum West. octavo die Septembris.

Patent. Anno octavo Edwardi pars prima membr. 14.

Rex omnib. ad quos &c. Salutem, Pro Georgio de sciatis quod cum Georgius de Rupe de Hiber. defunctus pro eo quod ad Parliamenta apud Dublin in Hibern. Ann. Regni Domini Edwardi nuper Regis in Angl. præc. nostri vicesimo, & Anno Ro Regni nostri secundo tenta, non venit be prout summonitus fuit, ad ducentas atu marcas amerciatus fuisset ut accipimus, in Ac Johannes filius prædicti Georgii

nobis supplicaverit ut habito respectu ad hoc prædictus pater fuus fe a Parliamentis prædictis causa inobedientiz non absentavit, per quod ita excessive amerciari deberet, Velimus concedere, quod amerciamenta illa que ab ipfo Jo. hanne ad opus nostrum per summonitionem Sccii noftri Dublin jam exigunt juste moderentur. Nos volentes cum codem Johanne gratiose agere in hac parte, Volumus & concedimus quod decem libræ tantum de prædictis ducentis marcis ad opus nostrum ex causs præmissis leventur : Et præfatum Johannem de toto residuo carundem decentarum marcarum tenore præsentium In cujus, &c. T. Rege quietamus. apud Novum Caftrum Super Tynam.

Per Petitionem de Concilio apud Novem Castrum super Tynam.

Et mandat. est Thoma & Camera. de Sccio. Dublin quod prædictas decem libras de prædictis ducentis marcis de præfato Johanne ad opus Regis leven, & ipsum Johannem de toto retiduo inde addict. Sccum. exonerari & quietum esse sact. T. ut supra.

Per eandem Petitionem

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Patent. vicefimo feptimo Edwardi tertit pars prima membr. 13.

Rex omnibus a quos, co. Salut. Pro Jacobo de Sciatis quod de gra. nostra speciali Andele de Concessimus pre nobis & hæred. nostris non veniendo dilecto, & fideli nostro Jacobo Daudle ad Parliade Helegh quod ipse ad totam vitam quietus sit de veniendo ad Parliamenta & Concilia nostra & hered nostrorum acetiam ad congregationes Magnatum & procerum ad mandata nostra vel hendum nostrorum ubicunque faciend. Ita quod idem Jacobus, quoad vixerit atione non adventus sui ad Parliamena, Concilia, seu Congregationes hujusmodi, seu Personalis Comparationis in sildem per nos vel heredes nostros aut ministros nostros quoscunque non impetatur, occasionetur aliqual. seu gravetur. Concessimus insuper pro nobis & hered. nostris præfato Jacobo quod ipse toto tempore vitæ suæ ad laborand. de guerra in servitiis nostris vel hered. no-Brorum feu ad homines ad arma, hobelarios, vel sagitarios in hujusmodi servitiis ex nunc inveniend. extra Regnum nofrum Angl. nisi cum Regale servitium nottrum aut heredum nottrorum fummonitum fuerit, contra voluntatem fuam nullatenus compellatur, nec ea de causa aliqualiter impetatur, Ita semper quod idem Jasobus cum hominibus ad arma & aliis armatis pro defensione

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Regni nostri Angl. infra idem Regnum quoties aggressus inimicorum nostrorum aut aliud periculum vel necessitas eidem Regno immineant una cum aliis fidelibus nostris ipsius Regni proficiscat. & homines ad arma, hopelar. & fagittar juxta statum suum sicut cæteri de codem Regno ea de causa invenire teneatur. In cujus rei, &c. T. Rege apud West. 20. die April.

per ipsum Regem.

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Patent. 42. Edwardi 3. part. Secunda mem. 13.

Pro Roberto de Insula milite de non veniendo ad Parliament.

Rex omnibus Ball. & fidelibus fuis ad quos &c. Salutem. Sciatis quod de gra nostra speciali concessimus pro nobis & hered noftris dilecto & fideli noftro Roberto de Insula mil. fil, & heredi Johannis de Insula, quod idem Robertus ad totam vitam suam hanc habeat libertatem, videlicet, quod ad Parliamenta Seu Concilia nostra vel hered. nostrorum ex quacunque causa venire minime teneatur. Et quod ipse in aliqua Jurata attincta aut magna Affifas nos vel heredes nostros tangent. aut aliis Juratis, attinctis aut affizis quibuscunque non ponatur, &c. Et ideo Vobis mandamus quod prædictum Robertum contra hanc concessionem nostram non molestetis in aliquo seu gravetis. In Cujus &c. T. Rege apud West. 24. die Novembr.

Per breve de privato Sigillo.

Pat. 34.

Pat. 34. Henric. fext. numb. 23.

Rex omnibus ad quos &c. Salut. Sci- Pro Rich. atis quod cum pro quibusdam arduis & Duce Ebor. de urgentibus negotiis nos statum & de tenend. Parliafensionem Regni nostri Angl. ac Eccle- Regis. he Anglicanæ contingentibus, quod dam Parliamentum nostrum nuper alpud Palatium nostrum West. teneri, & usque ad duodecim. diem hujus instantis mensis Novembr. ad idem Palatium noftrum adjornari & prorogari ordinaverimus, quia vero dicto Parliamento nostro propter certas, justas & rationabiles caufas in persona nostra non potunimus interesse. Nos de circumspedione & industria Charissimi Confanguinei nostri Rich. Ducis Ebora. plenam fiduciam reportantes, eidem Conanguineo nostro ad Parliamentum prædictum nomine nostro tenend. & in ed. procedend. & ad faciend. omnia & lingula quæ pro nobis & per nos pro bono regimine & gubernatione Regni nostri prædicti ac aliorum Dominorum nostrorum eidem Regno nostro pertinent. ibidem fuerint faciend. nec non ad Parliamentum illud finiend. & difsolvend. de affensu Concilii nostri plenam tenore præsentium commisimus potestatem. Dantes ulterius de assensuejusdem Concilii nostri tam universis k fingulis Archiepiscopis, Episcopis, Abbatibus, Prioribus, Ducibus, Comiri-

mentum nomine

bus, Vicecomitibus, Baronibus & Militibus cum omnibus aliis quorum interest ad Parliamentum nottrum prædictum conventur. scilic.tenore præsentium firmiter in mandatis quod eidem Con-Sanguineo nostro intendant in præmissis in forma prædicta. In Cujus &c. T. Rege. apud West. 11. die Novembr. Per breve de privato Sigillo

& de dat. prædict. oc.

THE PARTY

Pat. 24. Henric. 6. memb. 19. pars prima.

De non veni-Lovel.

Rex omnibus Balliis & fidelibus suis end. ad Parlia. ad quos &c. Salut. Sciatis quod cum ubi Wilh. Lovel miles ad Parliamenta & Concilia nostra ad mandatum nostrum venire teneasur, hinc est quod idem Wilhelmus, ob divers. infirmitat. quibus detinetur, absque maximo corporis sui periculo ad Parliamenta & Concilia pradicta laborare non sufficit, ut informamur. Nos præmissa, acbona & gratuita Cervitia quæ idem Wilh. tam patrino stro defuncto quam nobis in partibus transmarinis impendit, & nobis in Regno nostro Angl. impendere desiderat Considerantes, de gratia nostra speciali Concessimus eidem Wilh. quod ipse durante vita sua per nos vel hered. nostros ad veniend. ad Parliamenta seu Concilia nostra quæcunque tent. sive in posterum tenen. contra voluntates fuam non arctetur nec compellatur quovis quovis modo, Sed quod ipfe ab hujufmodi Parliamentis & Conciliis in futur. se absentare possit licite & impune, aliquo Statuto, Actu, Ordinatione five Mandato inde in Contrarium fact. ordinat. five provis. non obstant. Et ulterius volumus, & eidem Wilhelmo per præs. Concedimus quod absentatio hujusmodi non cedat ei in damnum seu prejudicium quoquo modo, Sed quod præs. Carta nostra de exemptione, per præfatum Wilh. seu alium quemcunque nomine suo in quibuscunque locis infra Regnum nostrum Angl. demonstrat. luper demonstratione illa eidem Wilh. valeat & allocetur, Provifo semper quod idem Wilh. ad voluntatem suam, & heredes, sui loca sua in Parliamenta & Conciliis prædictis habeant & teneant, prout idem Welh. & antecessores sui in hujusmodi Parliamentis & Conciliis ab antiquo habuerunt & tenuerunt, Concessione nostra prædicta non obstante. In Cujus &c. T. Rege apud West. quarto die Febr.

Per breve de privato sigillo & de data prædicta authoritate Parliamenti.

Clauso Anno 27. Henric. 6. m. 24. dorso.

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Rex dilecto & fidel. suo Hen. Brom-summonit.

Mete, Militi Baroni de Vescy Salutem. Parliamenti.

Quia & Volumus enim vos & heredes

vestros masculos de Corpore vestro legi
time

time exeuntes Barones de Vessey existere. T. Rege apud West. 24. die Januar.

Pat. 34. Henric. fext. membr. 13.

Pro Henrico. Dom. Vessey de exemptione. Rex concessit Hen. Bromslete militi domino Vessey qui senio & tantis insirmitatibus detentus existit, quod absque maximo Corporis sui periculo labor, non sufficit, quod ipse durante vita sua ad personalit. veniend.ad person. Regis, per aliquod breve sub magno vel privato sigillo, aut per literam sub sigillo Signeti Regis, vel per aliquod aliud mandatum Regis vel hered. suorum seu ad aliquod Concilium, sive Parliamentum Regis vel hæred. suorem ex nunc tenend. nullatenus arctatur neque compellatur contra voluntat. suam &c. T. Rege apud. West. 13. die Maii.

Per ipsum Regem de dat. prædicta auctoritate Parliamenti.

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SPEECH

Delivered in the Lower House of

PARLIAMENT

ASSEMBLED AT

OXFORD:

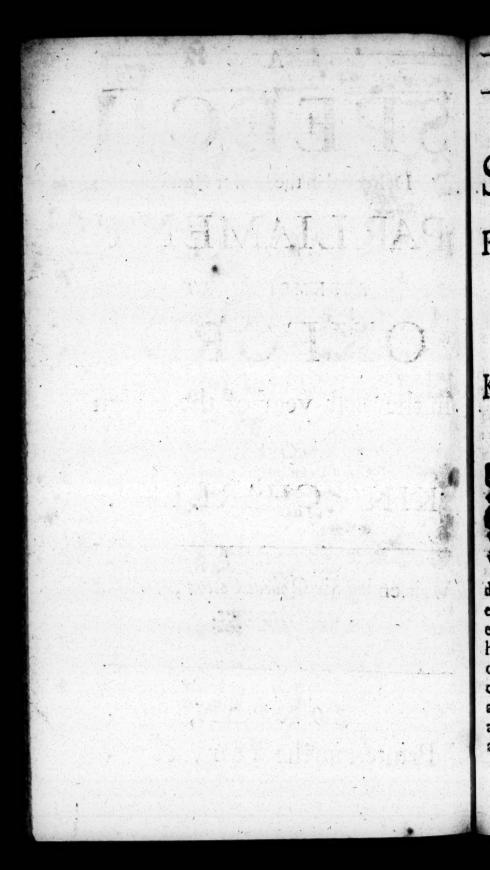
In the first year of the Reign

OF

KING CHARLES I.

Written by Sir Robert Cotton, Knight and Baronet.

LONDON, Printed in the Year, 1679.



A

SPEECH

Delivered in the Lower House of

PARLIAMENT

Affembled at

OXFORD:

In the first year of the Reign of

KING CHARLES.

Mr. SPEAKER,



Lthough the confiant Wisdom of this House of Commons did well and worthily appear in censuring that ill advised Member the last

day, for trenching so far into their antient Liberties, and might encourage each worthy Servant of the publique here to offer freely up his Counsel and opinion: Yet since these Walls cannot conceal from the Ears of captios, guilty and revengful men without the Counsel and debates within: I will endeavour, as my clear mind is free from any per-

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fonal distaste of any one, so to express the honest thoughts of my heart, and discharge the best care of my trust, as no person shall justly tax my innocent and publick mind, except his Conscience shall make him guilty of such Crimes as worthily have in Parliament impeached others in elder times. I will therefore, with as much brevity as I can, fet down how these disorders have by degrees sprung up in our own memories; how the Wisdom of the best and wifelt Ages did of old redress the And laftly, what modest and dutiful course I would wish to be followed by our selves in this so happy Spring of our hopeful Master. (For Mr. Speaker) we are not to judge, but to present: The redress is above ad Querimonian Vulgi.

Now (Mr. Speaker) so long as those attended about our late Soveraign Master, now with God, as had served the late Queen of happy memory, debts of the Crown were not so great; Commissions and Grants not so often complained of in Parliaments; Trade slourished; Pensions not so many, though more than in the late Queens time: for they exceeded not 18000 l. now near 120000 l. All things of moment were carryed by publick debate at the Council-Table; No honour set to sale; nor places of Judicature. Laws against Prictis

Priests and Recusants were executed: Refort of Papifts to Ambassadors houses barred and punished; his Majesty by daily direction to all his Ministers, and by his own Pen declaring his diflike of that Profession: No wastful expences in fruitless Ambassages, nor any transcendent power in any one Minister. For matters of State, the Council-Table held up the fit and antient dignity. So long as my Lord of Somerset stood in flate of grace, and had by his Majesty's hvour the trust of the Signet Seal; he oft would glory justy, there passed neither to himself, or his Friends, any long Grants of his Higness Lands or Pensions: For that which himself had, he mid 20000 l. towards the Marriage-Portion of the King's Daughter. are was to pass no Monopoly or Illegal Gant, and that some Members of this House can witness by his charge unto them. No giving way to the sale of Howars, as a breach upon the Nobility for fuch were his own words) refusing Sir John Roper's Office, then tendred to rocure him to be made a Baron. The 1match with Spain, then offered (and in with condition to require no further todration in Religion than Ambaffadors I. treare allowed) discovering the doued edealing and the dangers, he disfwal+ ed his Majesty from, and left him to or in distrust of the Faith of that King, nft lis

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and his great Instrument Gondomar, then here reliding, that his Majesty did term him long time after a Jugling Fack. Thus stood th'effect of his power with his Majesty when the Clouds of his misfortune fell upon him. What the future advices led in, we may well remember. The Marriage with Spain was again renewed: Gondomar declared an honest man: Popery heartened by admission of those unsure, before conditions of Conveniency. The forces of his Majesty in the Palatinate withdrawn, upon Spanish faith improved here and believed; by which his Highness Children have lost their Patrimony, and more money been spent in fruitless Ambaffages, than would have maintained an Army fit to have recovered that Countrey. Our old and fast Allies difheartened by that tedious and dangerous Treaty: And the King our now Master, exposed to so great a peril, as no wife and faithful Council would to fac ver have advised. Errors in Govern-fale ment, more in misfortune by weak the Councils than in Princes.

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The loss of the County of Poyntiffeit mor France, was laid to Bishop Wickbam's all t charge is the first of Rich. 2. for perswar got-ding the King to forbear sending aid the when it was required: a Capital crim ticle in Parliament. The loss of the Dutchyo the I Main was laid to Dela Poole, D. of Suprare fol

folk 28. Hen. 6. in fingle and unwifely treating of a Marriage in France.

A Spanish Treaty lost the Palatinate: Whose Council hath pronounced so great power to the Spanish Agent (as never before) to effect freedom to so many Priests as have been of late, and to become a Solicitor almost in every Tribunal for the ill-affected Subjects of the State, is worth the enquiry.

What Grants of Impositions before crossed, have lately been complained of in Parliaments? As that of Ale-houses, Gold-Thread, Pretermitted Customs, and many more; the least of which would have 50. Edw. 3. been adjudged in Parliament an heinous crime, as well as

those of Lyons and Latymer.

The Duke of Suffolk in Hen. 6. time, in procuring such another Grant in demogation of the Common Law, was ad-

judged in Parliament.

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The gift of Honours kept as the most de- sacred Treasure of the State, now set to fale, Parliaments have been Sultors to weak the King to bestow those Graces, as in the times of Edw. 3. Hen. 4. and Hen. 6. iffein more now led in by that way only, than ham's all the merits of the best deservers have riwa got these last 500 years. So tender was g aid the care of elder times, that it is an Arcrim ticle 28. Hen. 6. in Parliament against the book of Suffolk, that he had profession the Duke of Suffolk, that he had profession the for himself and some few others follows.

fuch Titles of Honour; and those so ir regular, that he was the first that ever was Earl, Marquels, and Duke of the felf same place. Edw. the first restrained the number in policy, that would have challenged a Writ by Tenure : and how this portion may fuit with profit of the State, we cannot tell. Great desents have now no other recompence than costly Rewards from the King: For, we now are at a vile Price of that which was once inestimable. If worthy Perfons have been advanced freely to places of greatest trust, I shall be glad. Spencer was condemned in the 15. of Edm. 3. for displacing good Servants about the King, and putting in his Friends and followers, not leaving either in the Church or Common-wealth, a place to any, before a Fine was paid unto him for his dependance. The like in part was laid by Parliament on De la Pook. It cannot but be a fad hearing unto us all, what my Lord Treasurer the last day told us of his Majesties great Debts high Engagements, and present wants The noise whereof I wish may ever rel inclosed within these Walls. what an incouragement it may be to our Enemies, and a disheartening to ou Friends, I cannot tell. The danger of those, if any, they have been the caule is great and fearful. It was no ima motive to the Parliament, in the tim

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of Hen. 3. to banish the Kings Halfbrethren for procuring to themselves so large proportion of Crown Lands. Gavefton and Spencer for doing the like for themselves, and their followers in Edw. the 2. time, the Lady Veffy for procuring the like for her Brother Beaumont, was banished the Court. Michael de la Poole was condemned the 20. of Rich. 2. in Parliament, amongst other Crimes, for procuring Lands and Penfions from the King, and having imployed the Subsidies to other ends than the grant intended. His Grand-child, William Duke of Suffolk, for the like was censured 28. Hen. 6. The great Bishop of Winchester, 50. Edw. 3. was put upon the Kings mercy by Parliament, for wasting in time of peace, the Revenues of the Crown, and gifts of the People, to the yearly oppression of the Commonwealth. Offences of this Nature were urged to the ruining of the last Duke of Somerset, in Edw. 6. time. More fearful examples may be found, too frequent in Records. Such Improvidence and ill Counsei led Hen. the 3. into so great a strait, as after he had pawned some part of his Forreign Territories, broke up his House, and sought his Diet at Abbies and Religious Houses, ingaged not onely his own Jewels, but those of the Shrine of St. Edward at Westminster, he was in the end (not content, but)

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constrained to lay to pawn (as some of his Successors after did) Magnam Coronam Anglie, the Crown of England. To draw you out to life the Image of former Kings extremities, I will tell you what, I found fince this Assembly at Oxford, written by a Reverend man, twice Vice-Chancellor of this place: his name was Gafeoign; a man that faw the Tragedy of De la Poole: He tells you that the Revenues of the Crown were to rent away by ill Council, that the King was inforced to live de Tallagiis Populi: That the King was grown in debt quinque centena millia librarum : That his great Favourite, in treating of a Forraign Marriage, had loft his Mafter a Forreign Dutchy: That to work his ends, he had caused the King to adjourn the Parliament in Villis & remotis partibus Regni, where few people, propter defedum hospitii & victualium could attend, and by thifting that Affembly from place to place to inforce (I will use the Authors words) illes pauces qui remanebunt de Communitate Regni, concedere Regi quamvis peffima. When the Parliament endeavoured by an Act of Resumption, the just and frequent way to repair the languishing State of the Crown (for all from Hen. 3. but one, till the 6. of Hen. 8. have used it) this great man told the King it was ad dedecus Regis, and forced him from it: To which the Com-

Commons answered, although vexati laboribus & expensis, Quod nunquam concederent taxam Regi, until by Authority of Parliament, resumeret actualiter omnia pertinentia Coronæ Angliæ. And that it was magis ad dedecus Regis, to leave fo many poor men in intolerable Want, to whom the King stood then indebted. Yet nought could all good Counsel work, until by Parliament that bad great man was banished; which was no fooner done, but an Act of Refumption followed the inrollment of the ACE ofhis Exilement. That was a speeding Article against the Bishop of Winchester and his Brother, in the time of Edw. 3. that they had ingroffed the person of the King from his other Lords. It was not forgotten against Gaveston and the Spencers in Edw. 2. time. The unhappy Ministers of Rich. 2. Hen. 6. and Edw. 6. felt the weight to their Ruine I hope we shall not of the like Errors. complain in Parliament again of fuch.

I am glad we have neither just cause or undutiful dispositions to appoint the King a Council to redress those Errors in Parliament, as those of the 42 H.3. We do not desire, as 5.H.4. or 29. H.6. the removing from about the King of evil Counsellors. We do not request a choise by name, as 14. E.3.3.5.11.R. 2.8. H. 4. or 31. H. 6. nor to swear them in Parliament, as 35. E. 1.9. E.2.

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or 5.R. 2. or to line them out their directions of rule, as 43.H.3. and 8. H.6. or defire that which H. 3. did promife in his 42. year fe acta omnia per affensum Magnatum de Concilio suo electorum, of sine eor. affensu nibil. We only in loyal duty offer up our humble desires, that since his Majesty hath with advised judgment elected so wise, religious and worthy Servants to attend him in that high imployment, he will be pleased to advise with them together, a way of remedy for those disasters in State, led in by long security and happy peace, and not with young and single Counsel.

A

SPEECH

Made by Sir

ROB. COTTON,

Knight and Baronet,

Before the Lords of his Majesties most Honourable

PRIVY COUNCIL,

at the Council Table:

Being thither called to deliver his Opinion touching the

ALTERATION

OF

COYN.

Sept. 2. Annoque Regni Regis Caroli 2.

LONDON, Printed in the Year, 1679. LATTA 6 3 1 3 Sept. 2. Suraque Con Region PE 0 3V official a surse

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SPEECH

Touching the

ALTERATION

COIN

My LORDS,



INCE it hath pleased this Honourable Table to command, amongst others, my poor Opinion concerning this weighty Proposition of

money, I most humbly crave pardon; if with that Freedom that becomes my duty to my good and gracious Master, and my obedience to your great command, I deliver it so up.

I cannot (my good Lords) but affuredly conceive that this intended project of enhauncing the Coyn, will Honour, Justice trench both into the Honour, the Justice, and Profit. and the Profit of my Royal Master very far.

All Estates do stand magis Famâ quam Vias Tacitus Saith of Rome: and Wealth in every Kingdom, is one of the Essential marks of their Greatness: and that is best expressed in the measure and purity of their Monies. Hence was it, that so long as the Roman Empire (a Pattern of best Government) held up their Glory and Greatness, they ever maintained, with little or no charge, the Standard of their Coin. But after the loofe times of Commodus had led in Need by Excess, and so that shift of changing the Standard, the Majesty of that Empire fell by degrees. And as Vopifeus faith, the steps by which that State descended, were visibly known most by the gradual alteration of their Coin. And there is no furer Symptom of a Confumption in State than the corruption in money.

Edw. I.

Hen. 6.

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What renown is left to the Posterity of Edw. the first in a mending the Standard, both in purity and weight from that of elder and more barbarous times, must stick as a blemish upon Princes that do the contrary. Thus we see it was with Hen. the sixth; who, after he had begun with abating the measure, he aster fell to abating the matter; and granted commissions to Missinden and others to practise Alchemy to serve his Mint. The extremity of the State in general selt this aggrievance, besides the dishonour it laid upon the Per-

fon

fon of the King, was not the least advantage his disloyal Kinsman took to grace himself into the peoples favour, to his Soveraign's ruin.

When Hen. the 8. had gained as much of power and glory abroad, of love and obedience at home, as ever any; he fuffered Shipwrack of all upon

this Rock.

When his Daughter Queen Eliz. Queen Eliz. came to the Crown, the was happy in Council to amend that Error of her Father: For, in a Memorial of the Lord Treasurer Burleigh's hand, I find that he and Sir Thomas Smith (a grave and learned man) advising the Queen that it was the honour of her Crown, and the true wealth of her Self and People, to reduce the Standard to the antient parity, and purity of her great Grandfather, King Edw. 4. And that it was not the short ends of Wit, nor starting holes of devices that can fustain the expence of a Monarchy, but found and folid courses; for so are the words. followed their advice, and began to reduce the Monies to their elder goodness, stiling that work in her first Proclamation, Annou. A famous Act. The next year following, having perfected it as it after stood; she tells her people by another Edict, that the had conquered now that Monster that had so long devoured them, meaning the Variation of the Standard:

Hen. 8.

E.m. 4.

dard: And so long as that sad Adviser lived, she never (though often by Projectors importuned) could be drown to any shift or change in the rate of her monies.

Juftices.

To avoid the trick of Permutation, Coyn was devised, as a rate and measure of Merchandize and Manusactures; which if mutable, no man can tell either what he hath, or what he oweth, no contract can be certain; and so all commerce, both publique and private, destroyed; and men again enforced to Permutation with things not subject to wit or fraud.

The regulating of Coyn hath been left to the care of Princes, who are prefumed to be ever the Fathers of the Common-wealth. Upon their honours they are Debtors and Warranties of Justice to the Subject in that behalf. They cannot, faith Bodin, alter the price of the moneys to the prejudice of the Subjects, without incurring the reproach of Faux Monnoyeurs. And therefore the Stories term Philip le Bell, for uling it, Falsificateur de Moneta. Omnino Monetæ integritas debet queri ubi vultus noster imprimitur, saith Theodoret the Gothe to his Mint-master, Quidnam erit tutum si in nostra peccetur Effigie? Princes must not suffer their Faces to warrant falshood.

Theodoret

Bodin.

Although I am not of opinion with

Mirror

Mirror des Justices, the antient book of Mirror des our Common Law, that Le Roy ne poit Justices. sa Mony empeirer ne amender sans l'affent de touts ses Counts, which was the greatest Council of the Kingdom; yet can I not pass over the goodness and grace of money of our Kings: (As Edw. 1. and Edw. 1. & 3. the 3. Hen. 4. and the 5. with others, Hen. 4. & 5. who out of that Rule of this Justice, Quod ad omnes spectat, ab omnibus debet approbari, have often advised with the people in Parliament, both for the Allay, Weight, Number of pieces, out of Coynage and Exchange;) and must with infinite comfort acknowledg the care and justice now of my good Master, and your Lordships Wisdoms, that would not upon information of some few Officers of the Mint, before a free and careful debate, put in execution this projech, that I much (under your Honours favour) suspect would have taken away the Tenth part of every mans due debt, or rest already reserved throughout the Realm, not sparing the King; which would have been little less than a Species of that which the Roman Stories call Tabula nova, from whence very often seditions have sprung: As that of Marcus Gratidianus in Livie, who pretending in his Confulship, that the currant money was wasted by use, called it in, & altered the Standard, which grew so heavy and grievous to the people, as the Author faith,

Profit.

faith, because no man thereby knew certainly his wealth, that it caus'd a Tumult.

In this last part, which is, the disprosit this enfeebling the Coyn will bring both to his Majesty and the Commonwealth, I must distinguish the Monies of Gold and Silver, as they are Bullion or Commodities, and as they are measure: The one, the extrinsick quality, which is at the Kings pleasure, as all other meafures to name: The other the Intrinsick quantity of pure metal, which is in the Merchant to value. As there the measure shall be either lessened or inlarged, so is the quantity of the Commodity that is to be exchanged. If then the King shall cut his Shilling or Pound nominal less. than it was before, a less proportion of fuchCommodities as shall be exchanged for it, must be received. It must then of force follow, that all things of necessity, as Victual, Apparel, and the rest, as well as those of pleasure, must be inhaunced. If then all men shall receive in their Shillings and Pounds, a less proportion of Silver and Gold than they did before this projected Alteration, and pay for what they buy a rate inhaunced, it must cast upon all a double loss.

What the King will suffer by it in the Rents of his Lands, is demonstrated e-nough by the alterations since the 18. of Edw the 3. when all the Revenue of the Crown came into the receipt Pondere &

Numero,

Numero, after five groats in the ounce; which fince that time, by the several changes of the Standard, is come to five thillings, whereby the King hath lost two third parts of his just Revenue.

In his Customs, the best of rate being regulated by pounds and shillings, his Majesty must lose alike: And so in all, and whatsoever monies that after this

he shall receive.

The profit by this change in Coynage, cannot be much, nor manent. In the other the loss lasting, and so large, that it reacheth to little less than (yearly) to a fixth part of his whole Revenue: for hereby in every pound tale of Gold, there is nine ounces, one penny weight, and 19 grains loss, which is 25 l. in account, and in the 100 l. tale of Silver 59 ounces, which is 14 l. 17 s. more.

And as his Majesty shall undergoe all these losses hereafter in all his receipts; so shall he no less in many of his disbursements. The wages of his Souldiers must be rateably advanced as the money This Edw. the 3. (as apis decreased. peareth by the account of the Wardrobe and Exchequor) as all the Kings after were enforced to do, as oft as they leffened the Standard of their monies. prices of what shall be bought for his Majesties service must in like proportion be inhaunced on him. And as his Majesty hath the greatest of Receipts and Iffues. Issues, so must be of necessity taste the

most of loss by this device.

It will discourage a great proportion of the Trade in England, and so impair his Majesties Customs. For that part (being not the least) that payeth upon trust and credit, will be overthrown; for all men being doubtful of diminution hereby of their personal Estates, will call in their moneys already out, and no man will part with that which is by him, upon such apparent loss as this must bring. What danger may befal the State by such a suddain stand of Trade, I cannot guess.

The moneys of Gold and Silver formerly Coyned and abroad, being richer than these intended, will be made for the most part hereby Bullion, and so transported; which I conceive to be none of the least inducements that hath drawn so many Gold-smiths to side this project, that they may be thereby Factors for the Strangers, who by the lowness of minting (being but 2 s. Silver the pound weight, and 4 s. for Gold; whereas with us the one is 4. and the other 5 s.) may make that prosit beyond-sea they cannot here, and so his Majestys Mint unset on work.

And as his Majesty shall lose apparently in the alteration of moneys a 14. in all the Silver, and a 25. part in all the Gold he after shall receive; so shall the

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Nobility, Gentry, and all other, in all their former setled Rents, Annuities, Pensions, and loans of money. The like will fall upon the Labourers and Workmen in their Statute-wages: and as their receipts are lessened hereby; fo are their Issues increased, either by improving all prices, or disfurnishing the Market, which must necessarily follow: For if in 5. Edw. 6. 3. Marie, and 4. Elizabethe, it appeareth by the Proclamations, that a rumor only of an alteration caused these effects, punishing the Author of fuch reports with Imprisonment and Pillory; it cannot be doubted but the projecting a change must be of far more consequence and danger to the State, and would be wished that the Actors and Authors of fuch diffurbances in the Common-wealth, at all times hereafter might undergo a punishment proportionable.

It cannot be held (I prefume) an advice of best judgment that layeth the loss upon our selves, and the gain upon our Enemies: for who is like to be in this time the greater Thriver? Is it not usual, that the Stranger that transporteth over moneys for Bullion, our own Gold-smiths that are their Brokers, and the Foreign Hedg-minters of the Netherlands (which terms them well) have a fresh and full Trade by this abatement? And we cannot do the Spanish

King

King (our greatest enemy) so great a favour as by this, who being the Lord of this Commodity by his West-Indies, we shall so advance them to our impoverishing; for it is not in the power of any State to raise the price of their own, but the value that their Neighbour Princes acceptance sets upon them.

Experience hath taught us, that the enfeebling of Coin is but a shift for a while, as drink to one in a Dropsie, to make him swell the more: But the State was never throughly cured, as we saw by Hen. the eighths time, and the late Queens, until the Coyn was made up

again.

I cannot but then conclude (my honourable Lords) that if the proportion of Gold and Silver to each other be brought to that purity, by the advice of Artists, that neither may be too rich for the other, that the mintage may be reduced to some proportion of Neighbour parts, and that the iffue of our Native Commodities may be brought to overburthen the entrance of the Forreign, we need not feek any way of shift, but shall again see our Trade to flourish, the Mint (as the pulse of the Commonwealth) again to beat, and our Materials by Industry, to be a mine of Gold and Silvertous, and the Honour, Justice, and Profit of his Majesty (which we all wish and work for) supported.

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The Answer of the Committees appointed by your Lordships to the Proposition delivered by some Officers of the Mint, for inbauncing his Majesties moneys of Gold and Silver.

2. September 1626.

The first Part. The Preamble.

7 E conceive that the Officers of the Mint are bound by Oath to discharge their several duties in their several places respectively. But we cannot conceive how they should stand tyed by Oath to account to his Majesty and your Honours of the Intrinsick value of all Forreign Coyns, and how they agree with the Standard of the State (before they come to the Mint) for it is impossible and needles: In the one, for that all Forreign States do for the most part, differ from us and our money infinitely amongst themselves: In the other, it being the proper care of the Merchants, who are prefumed not to purchase that at a dearer rate than they may be allowed for the same in fine Gold and Silver in the Coyn of England, within the charge of Coynage. And therefore needless.

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To induce the necessity of the Propolition, they produce two instances or examples; The one from the Rex Doller, and the other from the Royal of Eight; wherein they have unruly informed your Honours of the price and value in our monies, and our Trade of both of them. For whereas they fay that the Rex Doller weigheth 18. penny weight and 12. grains, and to be of the finest at the pound weight, 10 ounces, 10 pence weight, doth produce in exchange 5 .. 2 d. farthing of Sterling moneys. do affirm that the same Dollar is 18 d. weight, 18 grains, and in fineness 10 ounces 12 d, weight, equal to 4 s. 5 d. ob. of Sterling moneys, and is at this time in London at no higher price, which is thort thereof by 13. grains and a half fine Silver upon every Dollar, being 2 d. Sterling, or thereabout, being the charge of coynage, with a small recompence to the Gold-smith or Exchanger, to the profit of England 3 s. 6 d per Centum.

Whereas they do in their circumstance aver unto your Honours, that this Dollar runs in account of Trade amongst the Merchants as 5 s. 2 d.ob. English money: It is most false. For the Merchants and best experienced men protest the contrary, and that it passeth in exchange according to the Intrinsick value only 4 s. 5 d. obl of the Sterling money, or near thereabouts, and not otherwise.

The lecond instance is in the Royal of Eight, affirming that it weigheth 17

penny

penny weight, 12 grains; and being but of the finenels of 11 ounces at the pound weight, doth pass in exchange at 5 s. of our Sterling moneys, whereby we lose 6 s. 7 d. in every pound weight. But having examined it by the best Artists, we find it to be 11 ounces, 2 d. weight fine, and in weight 17 penny weight, 12 grains, which doth equal 4 s. 4 d. ob. of our Sterling moneys, and paffeth in London at that rate, and not otherwise, though holding more fine Silver by i 2 grains and a half in every Royal of Eight, which is the charge of coynage, and a small overplus for the Gold-imiths gain. And whereas they fay that the faid Royal of Eight runsin account of Trade at 5 s. of his Majeffies now English money; the Merchants do all affirm the contrary, and that it passeth only at 4 s. 4 ob. of the Sterling moneys, and no higher ordinarily.

And it must be strange (my honourable Lords) to believe that our Neighbours the Netherlanders, would give for a pound tale of our Sterling silver, by what name soever it passeth, a greater quantity of their moneys in the like intrinsick value by exchange; or that our Merchants would, knowing, give a greater for a less to them, except by way of usance. But the deceipt is herein only, that they continually varying their coyn, and crying it up at pleasure, may

deceive us for a time, in too high a Reputation of pure Silver in it, upon trust, than there is, unto a trial; and this, by no alteration of our coyn, unless we should daily, as they, make his Majesties Standard uncertain, can be prevented, which being the measure of Lands, Rents, and Commerce amongst our selves at home, would render all uncertain, and so of necessity destroy the use of money, and turn all to permutation of such things as were not subject to will or change.

And as they have mistaken the ground of their proposition, so have they upon a specious shew of some momentary and small benefit to his Majesty, reared up a vast and constant loss unto his Highness by this design, if once effected. For, as his Majesty hath the largest proportion of any, both in the entrances and issues; so should he by so enseebling of his coyn, become the greatest loser.

There needs no other instance than those degrees of diminution from the 18 of Edward 3. to this day; at which time the Revenue of the Crown was paid after five Groats the ounce (which is now five Shillings) which hath lost his Majesty two thirds of all his Revenue; and no less hath all the Nobility, Gentry, and other his Majesties landed Subjects in proportion suffered. But since, to our great comfort, we heard your

your Honours the last day to lay a worthy blame upon the Mint-masters, for that intended diminution of the Goldcoyn done by them without full warrant, by which we rest discharged of that fear: We will (according to our duties and your Honours command) deliver humbly our opinion concerning the reduction of the Silver money now currant to be proportionably equivalent to the Gold.

The English sterling Standard, which was no little honour to Edward the first, that fetled it from an inconstant motion, and laid it a ground, that all the States of Europe after complyed to bring in their account, which was of Silver a 11 to one of Gold, the Kings of England for the most part since have constantly continued the same proportion: and Spain, fince Ferdinand, who took from hence his pattern, have held and hold unchangeably the same unto this day: but fince with us, a late improvement of Gold hath broke that rule, and cast a difference in our Silver of six shillings in the pound weight; we cannot but in all humility present our fear, that the framing at this time of an equality, except it were by reducing the Gold to the Silver, is not fo fafe and profitable as is proposed by those of the Mint.

For whereas they pretend this, our richnels of our Silver will carry out

what

what now remaineth: We conceive (under favour) it will have no such effect, but clean contrary. For all the current Silver now abroad hath been fo culled by fome Gold-smiths, the same either turned into Bullion, and fo transported, that that which now remaineth will hardly produce 65 s, in the pound weight one with another; and so not likely, for so little profit as now it goeth, to be transported. But if the pound . Sterling should be as they defire, cut into 70 s. 6 d. it must of necessity follow, that the new money will convert the old money (now current) into Bullion; and foafford a Trade afresh for some ill Patriot Gold-smiths, and others, who formerly have more endamaged the State by culling, than any others by clipping; the one but trading in pounds, the other in thousands, and therefore worthy of a greater punishment. And we cannot but have just cause (my Lords) to fear that these bad members have been no idle instruments. for their private benefit, to the publick detriment, of this new project, so much tending to enfeebling the sterling Standard.

We further (under your Lordships favours) conceive, that the raising of the Silver to the Gold, will upon some suddain occasion beyond Sea, transport our Gold, and leave the State in scarcity of that, as now of Silver. And

And to that Objection of the Propofers, That there is no Silver brought of late into the mint: The causes we conceive to be (besides the unusual quantities of late brought into the Mint in Gold) one the overballancing of late of Trade; the other, the charge of Coynage. For the first, it cannot be but the late infection of this City was a let of exportation of our best Commodity, Cloath, made by that suspected in every place. To this may be added the wast fums of money which the necessary occasion of war called from his Majesty to the parts beyond the Seas, when we had least of Commodities to make even the ballancethere. And laftly, Dearth and scarcity of Corn, which in time of plenty we ever found the best exchange to bring in Silver. And therefore, fince by Gods great favour the Plague is ended, and general Trade thereby restored, and more of plenty this year than hath been formerly these many years, of Corn, we doubt not but if the Ports of Spain were now as free as they were of late, there would not prove hereafter any cause to complain of the want of Bullion in the State.

The second cause that the Mint remains unfurnished, will be the charge of Coynage, raised in price so far above all other places, constraining each man to carry his Bullion where he may receive

by

by Coynage the less of loss. And therefore if it may please his Majesty to reduce the prices here to the Rates of other of our Nelghbour Countreys, there will be no donbt but the Mint will beat as heretofore.

Questions to be proposed to the Merchants, Mint-masters, and Goldsmiths, concerning the Alteration of the Silver Moneys.

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now currant are not as dear as the Forreign of the Dollar and Real of 8. in the intrinsick value in the usual exchanges now made by the Merchants

beyond Seas?

2. Whether this advancing will not cause all the Silver Bullion, that might be transported in mass or Forreign Coyn, to be Minted with the Kings Stamp beyond Sea, and so transported, and his Mint thereby set less on work than now?

3. Whether the advancing the Silvercoin in England will not cause a transportation of most of that that is now
currant to be minted in the Netberlands,
and from them brought back again,
whereby his Majesties Mint will fail by
the exported benefit?

4. Whether the advancing the Silver Coin,

Coin, if it produce the former effects; will not cause the Markets to be unfurinished of present Coin to drive the exchange, when most of the old will be used in Bullion.

5. Whether the higher we raise the Coin at home, we make not thereby our Commodities beyond Sea the chea-

per ?

6. Whether the greatest profit by this enhauncing, will not grow to the ill members of the State, that have formerly culled the weightiest pieces, and fold them to the Stranger-Merchants to be transported?

Certain general Rules collected concerning Money and Bullion, out of the late Consultation at Court.

Old and Silver have a two-fold estimation: in the Extrinsick, as they are moneys, they are the Princes measures given to his people, and this is a Prerogative of Kings: In the Intrinsick they are Commodities, valuing each other according to the plenty or scarcity; and so all other Commodities by them; and that is the sole power of Trade.

The measures in a Kingdom ought to be constant: It is the Justice and Honour of the King; for if they be altered, all men at that instant are deceived in

their

their precedent contracts, either for Lands or Money, and the King most of all; for no man knoweth then, either what he hath, or what he oweth.

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This made the Lord Treasurer Burleigh in 73. when some Projectors had fet on foot a matter of this nature, to tell them that they were worthy to fuffer death for attempting to put so great a dishonour on the Queen, and detriment and discontent upon the People. For, to alter this publick measure, is to leave all the Markets of the Kingdom unfurnished; and what will be the mischief, the Proclamations of 5. Edw. 6.3. Marie and 4. Elizabethe, will manifest; when but a rumor of the like produced that effect fo far, that besides the faith of the Princes to the contrary delivered in their Edicts, they were inforced to cause the Magistrates in every Shire respectively to constrain the people to furnish the Markets to prevent a mutiny.

To make this measure then, at this time short, is to raise all prizes, or to turn the money or measure now currant into difife or Bullion: for who will depart with any, when it is richer by feven in the hundred in the Mass, than the new monies, and yet of no more value in the

Market?

Hence of necessity it must follow, that there will not in a long time be sufficient minted of the new to drive the exchange

5. Edw. 6. 3. Maria. 4. El37.

change of the Kingdom, and so all Trade at one instant at a stand; and in the mean time the Markets unfurnished: Which how it may concern the quiet of the State, is worthy care.

And thus far as money is a measure.

Now, as it is a Commodity, it is refpected and valued by the intrinsick quality. And first the one metal to the other.

All commodities are prized by plenty or fcarcity, by dearness or cheapness, the one by the other: If then we defire our Silver to buy Gold, as it of late hath done, we must let it be the cheaper, and less in proportion valued, and so contrary: for one equivalent proportion in both will bring in neither. We see the proof thereof by the unusual quantity of Gold brought lately to the Mint by reason of the price; for we rate it above all other Countries, and Gold may be bought too dear. To furnish then this way the Mint with both, is altogether impossible.

And at this time it was apparently proved, both by the best Artists and Merchants most acquainted with the Exchange, in both the examples of the Mint-masters in the Rex Dollar and Real of Eight, that Silver here is of equal value, and Gold above, with the forreign parts in the intrinsick; and that the sallacy presented to the Lords by the Mint-masters, is only in the nomination or extrinsick quality.

But if we defire both, it is not raising of the value that doth it, but the ballasing of Trade; for buy we in more than we fell of other Commodities, be the money never fo high prized, we must part with it to make the disproportion even: If we fell more than we

buy, the contrary will follow:

And this is plain in Spains necessities: For should that King advance to a double rate his Real of 8. yet needing, by reason of the barrenness of his Countrey, more of forreign Wares than he can countervail by exchange with his own, he must part with his money, and gaineth no more by enhauncing his Coin, but that he payeth a higher price for the Commodities he buyeth, if his work of raising be his own. But if we shall make improvement of Gold and Silver, being the staple Commodity of his State, we then advancing the price of his, abase to him our own Commodities.

To shape this Kingdom to the fashion of the Netherlands, were to frame a Royal Monarch by a Society of Merchants. Their Countrey is a continual Fair, and so the price of Money must rife and fall to fit their occasions. fee this by raising the Exchange at Frankford and other places, at the usual, times of their Marts.

C

The frequent and daily change in the

low Countreys of their moneys, is no fuch injustice to any there, as it would For being all either Mechabe here. nicks or Merchants, they can rate actordingly their labours or their wares, whether it be Coin or other Merchandife, to the present condition of their money in exchange.

And our English Merchants, to whose profession it properly belongs, do so, according to the just intrinsick value of their forreign Coin, in all barter of Commodities, or exchange, except at Usance; which we, that are ruled and tyed by the extrinsick measure of moneys, in all our constant Reckonings and Annual bargains at home, cannot do.

And for us then to raise our Coin at this time to equal their proportions, were but to render our felves to a perpetual incertainty: for they will raise upon us daily then again; which if we of course should follow, else receive no profit by this present change, we then destroy the Policy, Justice; Honour and Tranquillity of our State at home for ever.

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DANGER

WHEREIN THIS

KINGDOM

NOW

STANDETH,

AND THE

REMEDY

Written by Sir Robert Cotton, Knight and Baroner.

LONDON, Printed in the Year, 1679.

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The Danger wherein this Kingdom now standeth, and the Remedy.



S foon as the house of Austria had incorporated it self into the house of Spain, and by their new Discoveries, gotten to themselves the Wealth

of the Indies, they began to affect, and have ever fince pursued a fifth Monarchy.

The Emperor Charls would first have laid the foundation thereof in Italy, by surprizing Rome. But from this he was thrust by the force and respect of Religion, Hen. the 8. being made Caput faderis against him.

He then attempted it in High-Germany, practifing (by faction and force) to reduce those petty States to his absolute power. In this Hen. the 8. again prevented him, by tying the Lutheran Princes under his confederacy and affishance.

His Son, the second *Philip*, pursued the same Ambition in the *Neither Germany*, by reduction whereof, he intended to make his way further into the other. This the late Q. of Eng. interrupted, by siding with the afflicted people on the one part, and making her self Head of the Protestant League with the Princes on the other side; drawing in, as a secret

of State, the Countenance of France, to to sive the more reputation and affifrance to them, and security to it less. m

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these Unions and sleights, began first to break (if he might) the Amity of France and Engl. But sinding the common danger to be as sast a Tye, he raiseth up a party in that Kingdom of his own, by the which, the French King was so distressed, that had not the English Counsel and Assistance relieved him, Spain had there removed that next and great-

est obstacle of his ambition.

His Council now tells him from these examples, that the way to his great work is impossible so long as Engl.lies a let into his way; and adviseth him, that the remove of that obstacle be the first of his intents. This drew on those often secret practices against the person of the late Queen, and his open fury in 88 against the body of the State: For which, the (following the advice of a free Council) will never after admit of Peace, winning thereby the hearts of a loving people, who ever found hands & money for all occasions at home, and keeping sacredly her Alliances abroad, secured her confederates all her time in freedom, from fear of Spanish flavery; and so ended her old and happy days in great glory.

Spain then, by the Wisdom and power of that great Lady, dispoiled so of his

means

means to hurt, though not of his defire, makes up with her peaceful Successor of happy memory, the Golden League, that (difarming us at home by opinion of Security, and giving them a power in our Council by believing their friend-(hip and pretended marriage) gave them way to cherish amongst us a party of their own, and (bereft of power abroad) to lead in jealousie, and sow a division between us and our confederates; by which (we fee) they have swallowed up the fortune of our Masters Brother, with the rest of the Imperial States, distressed the King of Denmark by that quarrel, diverted Swedens Affistance by the Wars with the Pole, and moving of him now with the offer of the Danish Crown: And now (whether from the Plot, or our Fatality) it hath cast such a bone between France and us, as hath gotten themselves (by our quarrel of Religion) a fast confederate, and us a dangerous enemy: So that now we are left no other Assurance against their malice and ambition, but the Netherlands, where the tye of mutual fafety is weakned by daily discontents bred and fed between us from some illaffected to both our Securities; that from the doubtfulness of friendship as now we stand, we may rather expect from our own domestick faction, if they grow toofurious, they will rather follow the example of Rome in her growing, that held

it equally safe, honourable, and more eafie dare Reges, than subjugare Provinciam; considering the power they have in their hands, than to give any friendly Assistance to serve the present condition of our State. You may see therefore in what terms we stand abroad; and I fear me, at home, for resistance in no better State.

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There must be, to withstand a forreign invasion, a propartion both of Sea & Landforces, for to give an enemy an easie passage, and a port to relieve him in, is no less than to hazard all at one stake. And it is to be considered that no march by Land can be of that speed, to make head against the Landing of an Enemy, nor no such prevention as to be Mr. of the Sea. To this point of necessary defence, there can be no less than 240000 l.

For the Land-forces: If it were for an Offensive war, the men of less livelihood were the best spared, and were used formerly to make fuch war, purgamento Republice, if we made no further purchase by it. But for fafety of a Common-wealth the Wisdom of all times, did never interest the publick cause to any other than fuch as had a portion in the publick adventure. And that we faw in 88, when the care of the Q. & Council did make the body of that late Army, no other than of Trainedbands, which with the Auxiliaries of the whole Realm, amounted to no less than Neither were any of those 24000 men. drawn drawn out from forth their Countries, proper habitations before the end of May, that there might be no long aggrevance to the publick; such discontentments being ever to us a more fatal Enemy than any forreign force.

The careful distribution and direction of the Sea and Land-forces, being more fitting for a Council of War than a private man to advise of, I pass over; yet shall ever be willing and ready (when I shall be called) bumbly to offer up such observations, as I have formerly gathered by the former like occasions of this Realm.

To make up this preparation, there are requisite two things, Money and Affections, for they cannot be propely severed. It was well & wisely said by that great & grave Councellor the L. Burleigh, in the like case to the late Queen: Win hearts, and you may have hands and purses: And I find of late, that dissidence having been a defect in the one, it

bath unhappily produced the other.

In gathering then of money for this present need, there are required three things, Speed, Assurance, and Satisfaction. And the way to gather (as others in the like cases have done) must be by that path which hath been formerly called Via Regia, being more secure and speedy: For, by unknown and untroden ways, it is both rough the tedious, and seldom succeedeth well. This last way, although it took place as it were by a supply at first, and received no general denyal; yet since it bath drawn many to consider with them-

themselves and others of the Consequence, and is now conceived a pressure on their liberties and against Law, I much fear, if now again it be offered, either in the same face, or by privy Seal, it will be resused wholly. Neither find I that the restraint of those Recusants hath produced any other established than a stiff resolution in them and others to forhear. Besides, though it went at the first with some afformance, yet when we consider the Commissions and other forms incident to such like services as that how long it hangs in hand, and how many delays there were, we may easily see, that such a sum by Parliament granted, is far sooner and more

eafily gathered:

If any will make the accesses of times to produce an inevitable necessity to enforce it levied (whether in general) by excise, or imposition, or in particular upon some select persons (which is the custom of some Countreys) and so conclude it (as there) for the publick State Suprema lege, he must look for this to be told him: That feeing necessity must conclude always to gather money, as less speedy or assured then that so practised (which cannot be fitter than by Parliament) the success attendeth the humors of the heedless multitude, that are full of jealousie & distrust; & so unlike to comply to any unufual course of Levy, but by force; which if used, the effect is fearful, and hath been fatal to the Stateswhereas that

that by Parliament refleth principally on the regal person, who may with ease and safety mould them to his fit desire, by a gracious yielding to their just Petitions.

If a Parliament then be the most speedy, assured, and safe way; it is fit to conceive what is the safest way to act and work

it to the present end.

First, for the time of the usual Summons, reputed to be 40 days, to be too large for the present necessity; it may be by dating the Writ lessened, since it is no positive law; so that a care be had that there may be one County day, after the Sheriff hath received the Writ before the time of sitting.

If then the sum to be levied be once agreed of, for the time there may be in the body of the Grant, an Assignment made to the Knights of every County respectively, who (under such assurance) may safely give Security proportionable to the Receipts, to such as shall in present advance to the publick

Service any fums of money.

The last and weightiest consideration (if a Parliament be thought sit) is, how to remove or comply the differences between the King and Subject in their mutual demands. And what I have learned amongst the better sort of the Multitude, I will freely declare, that your Lordships may be the more enabled to remove and answer those distrusts, that either concern Religion, publick safety of the King and State, or the just liberties of the Common-wealth.

For Religion (a matter that they lay nearest to their conscience) they are led by this ground of jealousie to doubt some practice against it.

First, for that the Spanish match, which was broken by the grateful industry of my L. of Buckingh. out of his Religious care (as he there declares) that the Articles there demanded might lead in some such sufferance as might endanger the quiet, if not the State of the reformed Religion here: Yet there have (when he was an actor principal in the conditions with France) as hard, if not worse (to the preservation of our Religion) passed than those with Spain. And the suspect is strength-ned by the close keeping of this Agreement in that point there concluded.

It is no less an Argument of doubt to them of his affections, in that his Mother and others, many of his Ministers of near imploy-

ment about bim, are so affected.

They talk much of his advancing men Papistically devoted; some placed in the camp, of nearest service and chief command: And that the Recusants have gotten these late years, by his power, more of courage and assurance than before. If to clear these doubts (which perhaps are worse in fancy than in truth) he took a good course, it might much advance the publick Service against those squeymish humors that have more violent passion than setled judgment; and are not the least of the opposite number in the Commonwealth.

The next is, The late misfortunes & losses

of men, Munition, and honour in our late undertakings abroad; which the more temperate shrits impute to want of Counsel, and

the more Sublime wits to Practice.

They begin with the Palatinate, and by the fault of the loss there, on the improved credit of Gondomar, distrusting him for the staying of supplies to Sir Horace Vere, when Colonel Cecil was cast on that imployment, by which the King of Spain became Master of the Kings Childrens Inheritance.

And when Count Mansfield had a Royal Supply of Forces to affift the Princes of our part, for the Recovery thereof, either Plot or Error defeated the Enterprize from us,

to Spains great advantage.

That Sir Robert Mansel's expedition to Algiers should purchase only the security and guard of the Spanish Coasts. To spend so many hundred thousand pounds in the Cales Voyage against the advice of Parliament, only to warn the King of Spain to be in readiness, and so to weaken our selves, is taken for such a sign of ill affection to him, amongst the multitude.

The spending of so much Munition, Victuals, and Money in my Lord Willoby's journey, is conceived an unthrifty Error in the Director of it to disarm our selves in fruitless Voyages; nay, to some (over-curious) seems a plot of danger, to turn the quarrel of Spain (our antient Enemy) that the Parliament Petitioned and gave supply to support, upon our Ally of France; and soon after

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after, a new and happy the gave mach talk that we were not fo doubtful of Spain a many with; fince it was held, not long ago. a fundamental rule of their security and ours, by the old Lord Treasurer Burleigh; That nothing can prevent the Spanish Monarchy but a fastness of the two Princes. who fe amity gave countenance and courage to the Netherlands and German Princes to make head against bis Ambition. fee by this dis-union, a fearful defeat bath bappened to Denmark and that party, to the great advantage of the Austrian Family. And thus far of the Waste of publick Treat fure in fruitless Expeditions: An important cause to hinder any new supply in Parliament. Another fear that may distarb the Smooth and speedy passage of the Kings defires in Parliament, is the late wafte of the Kings Livelihood, whereby is like as, in former times) to arise this jealouse and fear : That when he hath not of his own to Support his ordinary charge (for which the Lands of the Crown were fetled unalterable; and called Sacrum Patrimonium Principis) that

then he must of necessity rest on those Assistances of the people, which ever were only collected and consigned for the Commonwealth. From hence it is like there will be no great labour or stiffness to induce his Majesty

to an act of Resumption; since such desires of the State have found an easie way in the will of all the Princes, from the third Hens

to the last.

But that which is like to pass

deeper

deeper into their disputes and care, is the late pressures they suppose to have been done upon the publick liberty and freedom of the Subject, in commanding their Goods without assent by Parliament, confining their persons without especial cause declared, and that made good against them by the Judges lately; and pretending a Writ to command their attendance in a foreign War: All which they are likely to enforce, as repugnant to many positive Laws, and customary luminities of this Commin-wealth.

And these dangerous distrusts to the people, are not a little improved by this unexemplified course (as they conceive) of retaining an Inland Army in Winter-season, when former times of greatest sear, as 88 produced no such and makes them (in their distracted sears) to consider their distracted sears, to consider their fortunes to the will of power more than of Law; and so makes good some further breaches upon their liberties and freedoms at home, rather than defend us from any sorce abroad.

How far such jealousies, if they meet with an unusual disorder of lawless Souldiers, or an apt distemper of the loose and needy multitude, which will easily turn away upon any occasion in the State that they can side withal, to a glorious pretence of Religion and publick safety, when their true intent will be only Rapine of the rich, and ruine of

all, is worthy a provident and preven-

ting care.

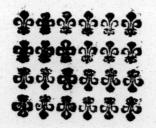
I have thus far delivered (with that freedom you pleafed to admit) fuch difficulties as I have taken up amongst the multitude, as may arrest, if not remove Impediments to any speedy supply in Parliament at this time. Which how to facilitate, may better become the care of your Lordships Judgments than my Ignorance. Only I could wish, that to remove away a perforal distaste of my Lord of Buckingham amongst the People, he might be pleased (if there be a necessity of Parliament) to appear a first Adviser thereunto; and what satisfaction it shall please his Majesty of grace to give at Such a time to his people (which I wish to be grounded by precedent of his best and most fortunate Progenitors, and which I conceive will largely fatisfie the defires and hopes of all) If it may appear in some fort to be drawn down from him to the people by the zealous care and industry that my L. of Buckingham bath of the publick unity o content, by which there is no doubt that be may remain, not only secure from any further quarrel with them, but merit an happy memory amongst them of a zealous Patriot. For to expiate the passion of the people at such a time with sacrifice of any his Majesties Servants, I have ever found it as in E. the 2. R. the 2. and H. 6.) no less fatal to the Master than the Minister in the end-VA-

ANATOMIZED

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FANCIE.

By Sir PHILIP SIDNEY.



LONDON, Printed in the Year, 1679:

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VALOUR ANATOMIZED IN A FANCY.



Alour towards Men, is an Emblem of Ability; towards Women a good quality fignifying a better. Nothing draws a

Woman like to it. Nothing is more behoveful for that Sex: for from it they receive Protection, and in a free way too, without any danger. Nothing makes a shorter cut to obtaining: for a Man of Arms is always void of Ceremony, which is the Wall that stands betwixt Piramus and Thisby, that is, Man and Woman: For there is no Pride in Women, but that which redounds from our own baseness (as Cowards grow Valiant upon those that are more Cowards.) So that only by our pale asking, we teach them to deny; and by our shamefac'dness we put them in mind to be modest. Whereas indeed it is cunning Rhetorick to perswade the hearers that they are that already which the world would

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would have them to be. This kind of Bashfulness is far from Men of valourous disposition, and especially from Souldiers; for fuch are ever men (without doubt) forward and confident, lofing no time left they should lose opportunity, which is the best Factor for a Lover, And because they know Women are given to diffemble, they will never believe them when they deny. Certainly before this age of Wit, and wearing black brake in upon us, there was no way known to win a Lady, but by Tilting, Turneying, and riding to feek Adventures through dangerous Forrests; in which time these slender Striplings with little legs were held but of strength enough to marry their Widows. even in our days, there can be given no reason of the inundation of Servingmen upon their Mistresses, but only that usually they carry their Masters Weapons, and their Valour. To be accounted handsom, just, learned, and well-favoured, all this carries no danger with it: But it is better to be admitted to the title of Valiant acts; at least that imports the venturing of Mortality; and all Women delight to hold him fafe in their Arms, who hath escaped thither through many dangers. To speak at once; Man hath a priviledge in Valour. In Cloaths and good Faces we do but imitate Women; and many of that Sex will will not think much (as far as an answer goes) to diffemble Wit too. So then these neat Youths, these Women in Mens Apparel, are too near a Woman to be beloved of her; they be both of a Trade, but he of grim aspect, and such aone a Lass dares take, and will desire him for newness and variety. A Scar in amans face, is the same that a Mole is in a Womans; and a Mole in a Womans, is a Jewel set in white, to make it feem more white. So a Scar in a Man. is a mark of honour, and no blemish; for 'tis a scar and a blemish in a Souldier to be without one. Now as for all things else which are to procure love, as a good Face, Wit, Cloaths, or a good Body; each of them (I must needs say) works somewhat for want of a better; that is, if Valour corrive not therewith. good Face availeth nothing, if it be on aCoward that is bashful, the utmost of it is to be Kist, which rather increaseth than quencheth Appetite. He that fendeth her Gifts, sends her word also, that he is a man of small Gifts otherwise; for Woeing by figns and tokens, implies the Author dumb. And if Ovid (who writ the Law of Love.) were alive, as he is extant, and would allow it as a good diversity, then Gifts should be sent as Gratuities, not as Bribes; and Wit would rather get promise than Love. Wit is not to be feen, and no Woman

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takes advice of any in her loving, but of her own eyes, or her Waiting-woman; nay, which is worse, Wit is not to be felt, and so no good Bedfellow. Wit applyed to a Woman makes her diffolve her simperings, and discover her teeth with laughter; and this is furely a purge for Love; for the beginning and original of Love, is a kind of foolish melancholly. As for the Man that makes his Taylor his Bawd, and hopes to inveagle his Love with fuch a coloured Suit, furely the fame man deeply hazards the loss of her favour upon every change of his Cloaths. So likewise the other that Courts her filently with a good Body, let me tell him that his Cloaths stand always betwixt his Mistriss eyes and The comliness of Cloaths depends upon the comliness of the Body, and so both upon opinion. She that hath been seduced by Apparel, let me give her to wit, that men always put off their Cloaths before they go to bed, and let her that hath been inamoured of her Servants Body, understand, that if she faw him in a skin of Cloath (that is, in a fuit made to the pattern of his body) the would discern slender cause to love him ever after. There are no Cloaths fit so well in a Womans eye, as a suit of Steel, though not of the fashion: and no man so soon surpriseth a Womans affections, as he that is the subject of Whisperf

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Whisperings, and hath always some 20 flories of his own Atchievements depending upon him. Mistake me not, I understand not by Valour one that never fights but when he is backt by drink or anger, or hiffed on by beholders; nor one that is desperate, nor one that takes away a Servingmans Weapons, when perhaps they cost him his quarters wages; nor one that wears a privy Coat of defence, and therein is confident; for then such as make Bucklers would be accounted the very fcum of the Common-wealth. I intend one of an even resolution, grounded upon Reason, which is always even, having his power restrained by the Law of not doing wrong

Philip Sidney.

Wooing-stuff.

Aint Amorist, what, do'st thou think To taste Loves Honey, and not drink One dram of Gall? or to devour A world of sweet, and taste no sour? Do'st thou ever think to enter (ture Th'Elisian Fields, that dar'st not venIn Charons Barge? a Lovers mind Must use to sail with every wind. He that loves, and fears to try, Learns his Miffris to deny. Doth the chide thee? 'tis to thew it, That thy coldness makes her do it: Is the filent? Is the mute? Silence fully grants thy fute: Doth the pout, and leave the room? Then flie goes to bid thee come: Is the fick? why then be fure, She invites thee to the cure: Doth fle cross thy fute with No? Tush, the loves to hear thee Woo: Doth she call the faith of man In question? Nay, 'uds foot, she loves thee than : And if e're she make a blot, She's loft, if that thou hit'st her not. He that after ten denials,

Dares attempt to farther tryals,

The dainties of his chaste desire.

Hath no warrant to acquire

Along Amaloudenced, Sec.

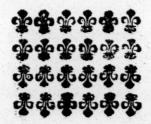
Philip Sidney.

Sir Francis Walfingham's

ANATOMIZING

Of Ambition, and Fortitude.

Written in the year, 1590.



LONDON,
Printed in the Year 1679.

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Sir Francis Walsingham's

ANATOMIZING

Of Shonesty,
Ambition, and
Fortitude.

write, I know not: For, as my thoughts have never dwelt long upon one thing, and so my mind

hath been filled with the Imagination of things of a different nature : So there is a necessity that this Off-spring of so uncomposed a Parent must be mishaped. answerable to the Original from whence it is derived. Somewhat I am refolved to write, of fome Virtues, and fome Vices and some indifferent things. For, knowing that a mans life is a perpetual action, which every moment is under one of these three heads; my Imaginations have ever chiefly tended to find out the Natures of these things, that I might (as much as my frailty (the infeparable companion of mans nature) would give me leave) wear out this Garment of my Body with as little inconvenience to my Soul as I could, and play this game of Conversation (in which every one (as long as he lives) makes one) with the reputation of a fair Gamester, rather than of a cunning one.

And first I will write of Honesty; not in its general sense (in which it comprehends all Moral Virtues) but in that particular, in which (according to our phrase) it denominates an honest man.

Honesty is a quiet passing over the days of a mans life, without doing inju-

ry to another man.

There is required in an honest man, not so much to do every thing as he would be done unto, as to forbear any thing that he would not be content to fuffer; for the effence of Honesty confifts in forbearing to do ill: And to good Acts is a proper Passion, and no effential part of honesty. As Chastity is the Honesty of Women, so Honesty is the Chastity of Man. Either of them once impaired is irrecoverable. For a Woman that hath loft her Maidenhead, may as easily recover it, as a Man that hath once taken liberty of being a Knave can be restored to the title of an Honest man. For Honesty doth not confift in the doing of one, or one thousand acts never fo well; but in spinning on the delicate Threds of Life, though not exceding fine, yet free from bracks and stains. We do not call him an honest

man, but a worthy man, that doth brave eminent acts: But we give him the title of an honest man, of whom no

man can truly report any ill.

The most eminent part of Honesty is Truth; not in words (though that be necessarily required) but in the course of his life; in his profession of Friendship; in his promise of Rewards and Benefits to those that depend upon him; and grateful acknowledging those good turns that he receives from any man.

The greatest Opposite to Honesty, is Falshood; and as that is commonly waited upon with Cunning and Dissimulation, so is Honesty with Discretion

and Affurance.

It is true, that Custom makes some apparently false; some through Impudence, and too much use; and other some for want of Discretion, which is they had had, should have been employed in covering it. And there be some, in whom (though it be impossible Honesty should be a fault in Society) their indiscreet managing of it, makes it holden for a thing that's meerly a Vice, a wonderful troublesome Companion.

An Honest man is as near an Aptitude to become a Friend, as Gold is to become Coin: he will melt with good Offices well done, and will easily take the stamp of true Friendship; and having once taken it, though it may be

bended

bended and bruised, yet still will keep his stamp clean without rust or canker, and is not ashamed to be enclosed in it, but is contented to have all his glory

feen through it only.

It is of it self a competent Estate of Virtue, able to supply all necessary parts of it to a mans own particular; and a man that is born to it, may raise himself to an eminency of all Virtues; though of it felf it will not furnish a man with the abilities of doing any glorious things. It is pity that Honesty should be abstracted from the lustre of all other Vertues. But if there be fuch an Honefty, the fittest Seat for it is the Countrey, where there will be little need of any greater ability, and it will be least Subject to Corruption. And therefore, fince it is the foundation upon which a man may build that part of his life which respects Conversation, he that builds upon it (let his actions be never fo mean) shall be fure of a good, though not of a great Reputation; whereas letting it perish, let the rest of the building of his life be never so eminent, it will ferve but to make the ruine of his good Name more notorious.

Of Ambition.

Ove, Honour, and Praise are the greatest Blessings of this world: All other Contents reflect primarily upon the Body; and please the Soul only because they please some one or more fenses. But those therefore only delight the senses, because the soul by discourse was first pleased with them. For in it felf there is more Musick in a railing Song, thrust upon a good Ayre, than in the confused applause of the multitude. But because the soul, by discourse, finds this clamor to be an argument of the estimation which those that so commend it have of it, it likes it felf better, and rejoyceth the more in it self, because it fees other men value it. For there are two ways of proving; the one by Reason, and the other by Witness; but the more excellent proof is that of Reason: For he that can by Reason prove any thing to me, makes his knowledge mine, because by the same Reason I amable to prove it to another: But if 20 men should swear to me they saw such a thing, which before I did not believe; it is true, I should alter mine opinion, not because there appeared any greater likelihood of the thing, but because it was unlikely that fo many men should lie: And if I should go about to make others

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others of the same opinion, I could not do it, by telling them I knew it, or I faw it; but all I could fay, were, I did believe it, because such and such men told me they faw it. So in the comfort a man takes of himself (which grows out of the confideration of how much it self deserves to be beloved) a vertuous wife fellow will take enough comfort and joy in himself (though by missortune he is troubled to carry about with him the worlds Ill Opinion) by difcourling that he is free from those Slanders that are laid upon him, and that he hath those Sufficiencies and Vertues which others deny. And on the contrary fide, he without deserving it (having the good fortune to be esteemed and honoured) will eafily be drawn to have a good opinion of himself; as, out of modesty, submitting his own Reason to the testimony of many Witnesses.

Ambition in it self is no fault; but the most natural commendation of the Soul, as Beauty is of the Body: It is in Men, as Beauty is in Women. For, as to be naturally exceeding handsome, is the greatest commendation of that Sex, and that for which they most desire to be commended; so that Ambition, by which men desire Honour the natural way (which consists in doing honourable and good acts) is the root of the most perfect commendation that a Moral man is capable of.

Those

Those only offend in their Ambition; who out of the earthliness of their minds dare not aspire to that true Honour which is the estimation of a man, being as it were the Temple wherein Vertue is inshrind. And therefore settle their minds only upon attaining Titles and Power; which at the first were, or at least should be the mark whereby to distinguish men according to the rate of their Vertues and sufficiencies; but are now only Arguments of a mans good fortune, and effects of the Princes favour.

It is true that Power is a brave addition to a worthy man; but a Fool or a Knave that is powerful; hath (according to the degree of his power) just that advantage of a vertuous prudent man, that Adam before he fell, had of the Angels that stood; an ability to do more ill.

As for Titles (which at first were the marks of Power, and the rewards of Vertue) they are now (according to their name) but like the Titles of Books, which (for the most part) the more glorious things they promise, let a man narrowly peruse them over, the sless substance he shall find in them. And the wooden Lord is like the Logg that Jupiter gave the Frogs to be their King; it makes a noise; it prepares an expectation of great matters; but when they

they once perceived it unactive, and fenfelefly lying still, the wifer fort of Frogs began to despite it, and (in fine) every young Frogling presumed to leap

up and down upon it.

Some few there are, who (left the species of our antient worthy Lords should be lost) do preserve in themfelves the will and defire, fince they want the means to do brave and worthy acts. And therefore I fay, let a man by doing worthy acts deferve honour, and though he do not attain it, yet he is much a happier man than he that gets it without defert. For fuch a man is before-hand with Reputation; and the world fill owes him that honour which his deferts cry for, and it hath not paid; whereas that man that hath a great Reputation, without deferving it, is behind-hand with the world; and his honour is but lent, not paid: And when the world comes to take accompt of its applause, and finds his title of Merit (by which he pretends to it) weak and broken, it will recall it's approbation, and leave him by fo much the more a notorious Bankrupt in his good Name, by how much the estimation of his wealth that way was the greater.

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Of Fortitude.

COr a Man to be compleatly happy. there is required the Perfection of all moral Virtues; and yet this is not enough; for Vertues do rather banish Misfortunes, and but thew us Joy, than establish Felicity; which is not only an utter alienation from all affliction, but an absolute fulness of joy. And fince the foul of man is infinitely more excellent than any thing else it can meet withal in this world, nothing upon Earth can fatisfie it, but in the enjoying of the greatest abundance of all delights that the most nimble-witted man can frame to himself: For that his foul will still have a further defire, as unsatisfied with that it enjoys. Therefore the perfection of happiness confists in the love of God, which is only able to fill up all the corners of the foul with most perfect joy; and consequently to fix all its defires upon those Celestial Joys that shall never be taken from it. But this, as it cannot be obtained by discourse, but by unfeigned Prayers, and the affistance and illumination of Gods grace; fo is it not my purpose to prick at it. And for that part of felicity which is attained to by moral Virtue, I find that every Virtue gives a man perfection in some kind, and a degree of Felicity too, viz. Honesty Honesty gives a man a good report;
Justice, Estimation and Authority;
Prudence, Respect and Considence;
Courtesse and Liberality, Affection, and a kind of Dominion over other men.

Temperance, Health.

Fortitude, a quiet mind, not to be moved by any Adversity, and a Confidence not to be circumvented by any danger.

So that all other Virtues give a man but an outward happiness, as receiving their reward from others; only Temperance doth pretend to make the Body a Stranger to pain, both in taking from it the occasion of Diseases, and making the outward inconveniences of want, as hunger and cold, if not deligtful, at least sufferable.

Fr. Walfingham.

A BRIEF

DISCOURSE

Concerning the Power of the

PEERS

AND

COMMONS

OF

PARLIAMENT,

In point of

JUDICATURE.

Written by Sir ROBERT COTTON at the request of a Peer of this Realm.

LONDON: Printed in the Year, 1679.

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DISCOURSE.

Concerning the

POWER OF THE PEERS, &c.

SIR,



O give you as short an account of your desire as I can, I must crave leave to lay you, as a ground, the frame or first model

of this State.

When after the period of the Saxon time Harold had lifted himself into the Royal Seat, the great Men, to whom but lately he was no more than equal either in fortune or power, distaining this act of Arrogancy, called in William, then Duke of Normandy, a Prince more active than any in these Western parts, and renowned for many Victories he had fortunately atchieved against the French King, then the most poeent Monarch of Europes

This Duke led along with him to this work of glory, many of the younger

4 Sons

Sons of the best Families of Normandy, Picardy, and Flanders, who as Undertakers, accompanied the undertaking of this fortunate man. The Usurper flain, and the Crown by War gained, to lecure certain to his Posterity what he had To fuddenly gotten, he shared out his purchase, retaining in each County a portion to support the Dignity Soveraign, which was stiled Demenia Regni, now the ancient Demeans; and affigning to others his adventurers fuch portions as suited to their quality and expence, retaining to himself dependency of their personal service except such Lands as in free Alms, were the portion of the Church) these were stiled Barones Regis, the Kings immediate Freeholders; for the word Baro imported then no more.

As the King to these, so these to their sollowers sub-divided part of their shares into Knights Fees; and their Tenants were called Barones Comites, or the like; for we find, as the Kings write in their Writs, Baronibus suis & Francois & Anglois; the Soveraigns gifts, for the most part, extending to whole Counties or Hundreds, an Earl being Lord of the one, and a Baron of the inferiour Donations to Lords of Townships or Mannors. As thus the Land, so was all course of Judicature divided; even from the meanest to the highest porti-

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on, each several had his Court of Law, preserving still the manner of our Ancestors the Saxons, who jura per pagos reddebant; and these are still termed Court Barons, or the Freeholders Court, twelve usually in number, who with the Thame or chief Lord were Judges. The Hundred was next; where the Hundredus or Aldermanus, Lord of the Hundredred, with the chief Lords of each Township within their limits judged.

Gods People observed this form in the publique, Centuriones & Decani judicabant plebem omni tempore. The County or generale placitum was the next: This was, so to supply the defect, or remedy the Corruption of the Inseriour, Ubi Curia Dominarum probantur defecisse, pertinent ad Vicecomitem Provinciarum. The Judges here were Comites, Vicecomites, & Barones Comitatus qui liberas in co terras babent.

The last and supream, and proper to our question, was Generale Placitum apud London, Universalis Synodus, in Charters of the Conqueror, Capitalis Curia; by Glanvile, Magnum & Com-Lib. Ep. Glanmune consilium coram Rege & Magnatibus vile. Suis. In the Rolls of Hen. the third, it is not stative, but summoned by Proclamation: Edicitur generale placitum apud London, saith the Book of Abingdon; whether Episcopi, Duces, Principes, Satrapa, Rectores, & Causidici exomni parte

Lib. Sancti Etheldredi Episc. confluxerunt ad istam Curiam, laith Glanville, Causes were referred propter aliquam dubitationem que emergit in Comitatu, cum Comitatus nescit dijudicare. Thus did Ethelwold Bishop of Winton, transfer his Suit against Leoftine from the County ad generale placitum, in the time of King Etheldred: Queen Edgin against Goda from the County appealed to King Etheldred at London, Congregatis principibus & Sapientibus Anglia. A Suit between the Bishop of Winton and Durbam, in the time of Saint Edward, Coram Episcopis & Principibus Regni in pre-Sentia Regis, ventilata & finita. In the 10. year of the Conqueror, Epiferpi, Comites, & Barones Regia potestate è diversts Provinciis ad universalem Synodum pro causis audiendis & tractandis convocati, faith the Book of Westminster; and this continued all along in the succeeding Kings Reigns until towards the end of Henry the third.

As this great Court or Council confisting of the King and Barons, ruled the great affairs of State, and controlled all inferiour Courts; so were there certain Officers, whose transcendent power seemed to be set to bound in the execution of Princes Wills; as the Steward, Constable, and Marshal, fixed upon Families in see for many Ages: They as Tribunes of the People, or Ephori amongst the Athenians, grown by an

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unmannerly carriage, fearful to Monarchy, fell at the Feet and mercy of the King, when the daring Earl of Leicester was flain at Evelbam. This Chance. and the dear experience Henry the third himself had made at the Parliament at Oxford in the 40th, year of his Reign, and the memory of the many streights his Father was driven unto especially at Runny-mead near Stanes, brought this King wifely to begin what his Succesfors fortunately finished, in lessening the strength and power of his great And this was wrought by fearching into the Regality that had usurped over their peculiar Soveraigns (whereby they were (as the Book at St. Albans termeth them) Quot Domini tot Tyranni) and by weakening that hand of power which they carried in the Parliaments, by commanding the Service of many Knights, Citizens, and Burgesses to that great Council. began the frequent sending of Writs to the Commons, their affents not only used in Money, Charge, and making Laws (for before all Ordinances paffed by the King and Peers) but their confent in Judgments of all natures, whether Civil or Criminal. In proof whereof, I will produce some few succeeding Presidents out of Record.

When Adomar, that proud Prelate of Liber Santti Winchester, the Kings half Brother, had Albans sol. 207. grieved Anno 44. lib.4.

greved the State with his daring power, he was exiled by joynt sentence of the King, the Lords and Commons; and this appeareth expresly by the Letter fent by Pope Alexander the fourth, expostulating a revocation of him from Banishment, because he was a Churchman, and fo not subject to Lay Censures. In this, the Answer is, Si Dominus Rex & Regni majores boc vellent, meaning his revocation, Communitas tamen ipsius ingressum in Angliam jam nullatenus suffine-The Peers Subsign this Answer with their names, and Petrus de Montford vice totius Communitatis, as Speaker or Protector of the Commons: For by this stile Sir 7. Tiptoft Prolocutor affirm eth under his Arms the Deed of entail of the Orown by King Henry 4. in the 8. year of his Reign, for all the Com-

Charta orig. Sub Sigil. Ann. 8. H. 4. apud Rob. Cotton.

Rot. Parl.anno. E. 2.

mons.

The Banishment of the two Spencers in 15. E. 2. Pralati, Comites & Barones & les autres Peeres de la terre & Commons de Roialme, give Consent and Sentence to the Revocation and Reverlement of the former Sentence; the Lords and Rot. Parl. anno. Commons accord, and so it is expressed

18. E. 2. in the Roll.

In the first of Edward the third, when Rot. Parl. anno Elizabeth, the Widdow of Sir John de 8. E. 3. n. 11. Burgo complained in Parliament that Hugh Spencer the younger, Robert Baldock, and William Cliffe his Instruments,

ments, had by duress forced her to make a writing to the King, whereby the was despoiled of all her inheritance, Sentence was given for her in these Pur ceo que avis est al Evesque's words. Counts & Barones & autres Grandes & a tout Cominalte de la terre, qui le dit escript est fait contre ley, & tout manere de raison si fuist le dit escript per agard del parliam. dampue elloques al livre a la dit Eliz.

In the 4th. of Edward 3. it appears by a Letter to the Pope, that to the Sentence given against the Earl of Kent, the Commons were parties as well as the Lords and Peers; for the King directed their proceedings in these words; Comitibus, Magnatibus, Baronibus, & aliis de Communitate dicii Regni ad Parliamentum illud congregatis injunximus, ut super his discernerent & judicarent quod rationi & justitiæ conveniret, babere præ oculis, solum Deum qui cum concordi & unanimi sententia tanquam reum criminis læsæ majestatis morti adjudicarent ejus sententia, &c.

When in the 50th. of E. 3. the Lords Parl. Ed. 3. had pronounced the Sentence against Richard Lyons, otherwise than the Commons agreed; they appealed to the King, and had redrefs, and the Sentence entred to their defires.

When in the first year of R.2. William Parl. 1. R. 2. Weston, and John Jenning's were arraign- n. 38, 39. ed in Parliament for furrendring certain Forts of the Kings, the Commons

were parties to the Sentence against them given, as appeareth by a Memorandum annexed to that Record.

Parl. 1. H. 4.

In 1 H.4. although the Commons refer by protestation, the pronouncing the sentence of deposition against King Richard the Second, unto the Lords, yet are they equally interessed in it, as appeareth by the Record, for there are made Protectors or Commissioners for the whole Parliament, one Bishop, one Earl, one Abbot, one Baronet, and two Knights, Gray and Erpingham for the Commons; and to infer, that because the Lords pronounced the fentence, the point of Judgment should be only theirs, were as abfurd, as to conclude that no authority was left in any other Commissioner of Over and Terminer, than in the person of that man solely that speaketh the Sentence.

Rot. Parl. An. 2. H. 5.

In the Second of Hen. the 5th the Petition of the Commons imported no less than a Right they had to act and affent to all things in Parliament; and so it is Answered by the King. And had not the Journal Roll of the Higher House been lest to the sole entry of the Clerk of the Upper House, who either out of neglect to observe due form, or out of purpose to obscure the Commons right, and to flatter the power of those he immediately served, there would have been frequent examples of all times to

clear

this doubt, and to preserve a just Interest to the Common-wealth. And how conveniently it suits with Monarchy to maintain this form, lest others of that well-framed body, knit under one head, should swell too great and monstrous it may be easily thought. For, Monarchy again may sooner groan under the weight of an Aristocracy, as it once did, than under a Democracy, which it never yet either felt or feared.

R. C. B.

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